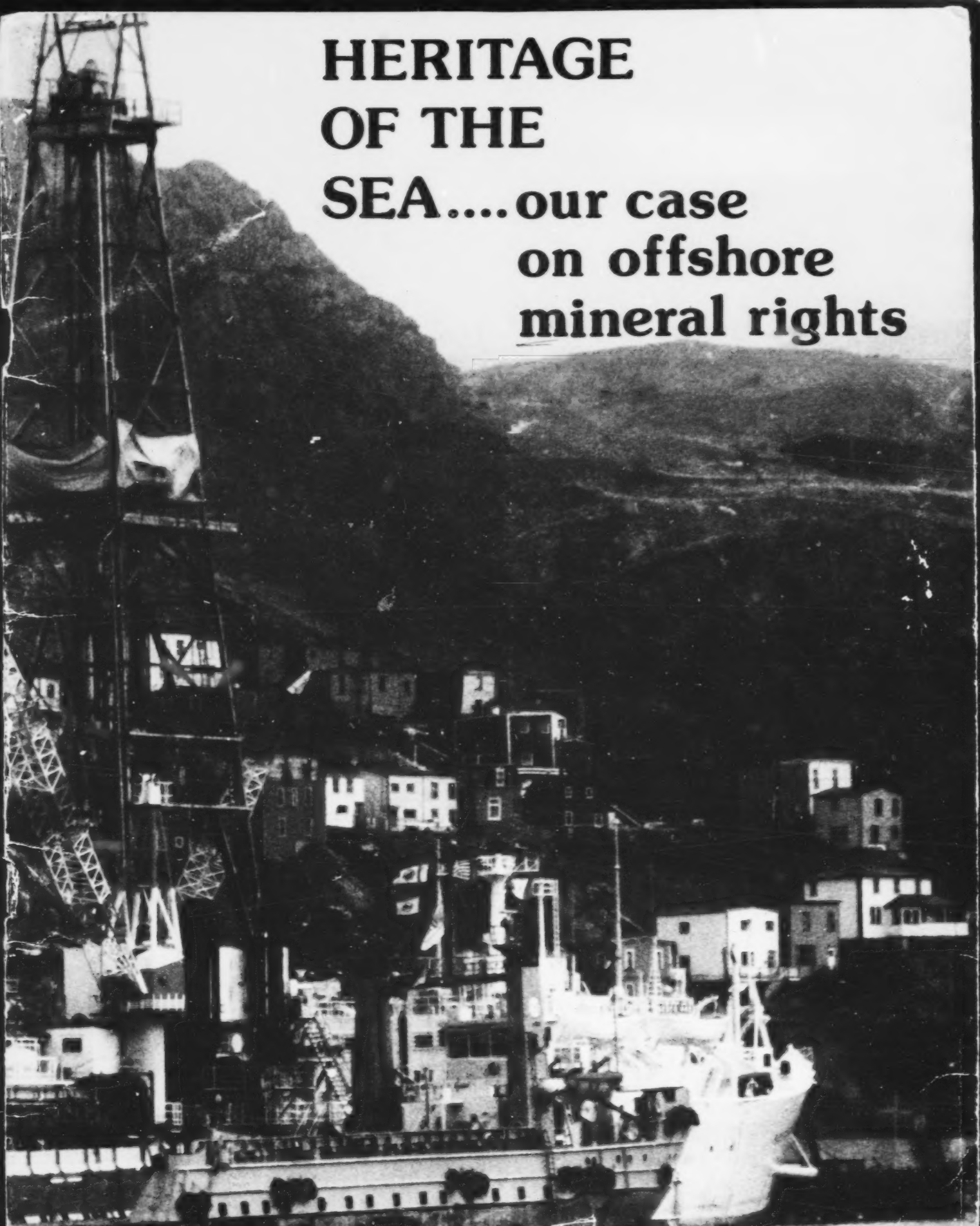
HERITAGE OF THE SEA....our case on offshore mineral rights



FOREWORD

This Province has been blessed with many natural resources — our mines, forests and water power — but none are as bountiful as our marine resources. The fishery has, since John Cabot's voyage in 1497, been the backbone of the Province's social and economic fabric.

Now the sea holds forth a new and exciting promise — offshore oil and gas.

Never in the history of Newfoundland and Labrador have we had an opportunity such as that posed by the development of our offshore oil and gas resources. Grasped quickly and guided properly, offshore oil and gas could catapult Newfoundland into the forefront of Confederation and permit us to become a contributor to the Canadian nation beyond our most optimistic dreams.

But proper resource management is all important because the potential benefits will not flow to us automatically. Moreover, if this industry develops at too fast a rate and in the wrong manner, severe social and economic disruption will surely result. Government policy on offshore oil and gas management must recognize this potential for both good and harm. These resources must be developed first and foremost so as to benefit the people of Newfoundland and Labrador.

The people of this Province, and indeed all Canadians, must understand how crucial the issue of offshore oil and gas is to us. It is my sincere wish that this booklet will help provide the basis for widespread public discussion of this issue and will lead to a determination on the part of our people to fight for what is morally and legally theirs.

Frank Moores

Frank D. Moores,
Premier of Newfoundland
and Labrador

Test of the Gudrid
Gas Discovery
September, 1974

Area:	Labrador Shelf
Latitude:	54° 54' 30" N
Longitude:	55° 52' 31" W
Total Depth:	9311'
Spud date:	July 14, 1974
Rig release date:	October 3, 1974
Status:	open file
Recovery:	natural gas and condensate, no water
Flow rate:	20 million cubic feet per day

DEPTH IN KILOMETRES

OUR OFFSHORE RESOURCES: The Challenge of Their Development

The continental margin off Newfoundland and Labrador which is made up of the Shelf, Slope and Rise, covers an area of some 700,000 square miles; nearly five times the entire landmass of the Province.

The Province's legal claim is with respect to "the natural prolongation of its landmass", that is, the continental margin, or the **legal** continental shelf, not just to the **physical** continental shelf, one part of it. The lawyer's concept of a legal continental shelf should not be confused with the smaller physical continental shelf known to geographers. As shown on the opposite page, the margin varies in width from 200 miles off Labrador to over 450 miles off St. John's and lies in water up to 10,000 feet deep. The geological cross-section below shows a typical section of the seabed off the coast of Labrador (Figure 1).

As you can see, the old rocks which exist on land in the Province are covered offshore by young rocks which extend seaward for hundreds of miles to the edge of the continental rise where they meet the rocks of the deep ocean floor. Geophysical and geological surveys conducted by the oil companies have shown that unlike the old rocks on land, the young rocks offshore have a high potential for oil and gas.

Geologically, our continental margin contains four distinct basins: The Gulf of St. Lawrence Basin, the Scotian Basin, the East Newfoundland Basin and the Labrador Basin (Figure 2). It is estimated that our continental margin holds economically recoverable reserves of 40 trillion cubic feet of gas and 3.5 billion barrels of oil; roughly one-third in the Labrador Basin and two-thirds in the East Newfoundland Basin.

The distance from the Tail of the Banks in the south to the northern tip of Labrador is almost 1400 miles. Conditions in the southern area are generally comparable to those of the North Sea but the environment becomes more hostile as one moves north into heavier pack ice and iceberg conditions.

About 80,000 miles of seismic surveys have been completed over the area, plus a large number of geological surveys. These surveys are used by the oil companies to determine the nature of the rocks which make up the seabed and where wells should be drilled.

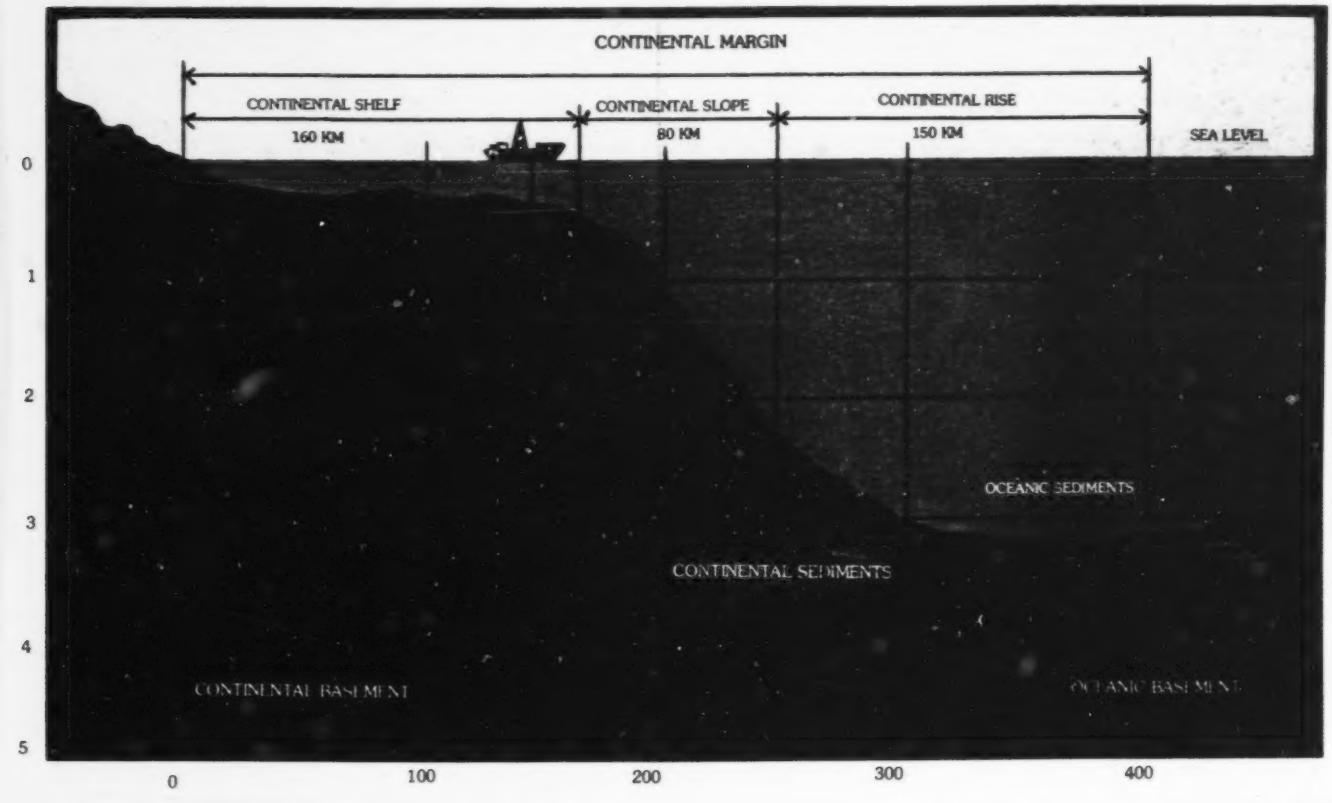


FIG 1

TYPICAL CONTINENTAL MARGIN CROSS SECTION COAST OF LABRADOR

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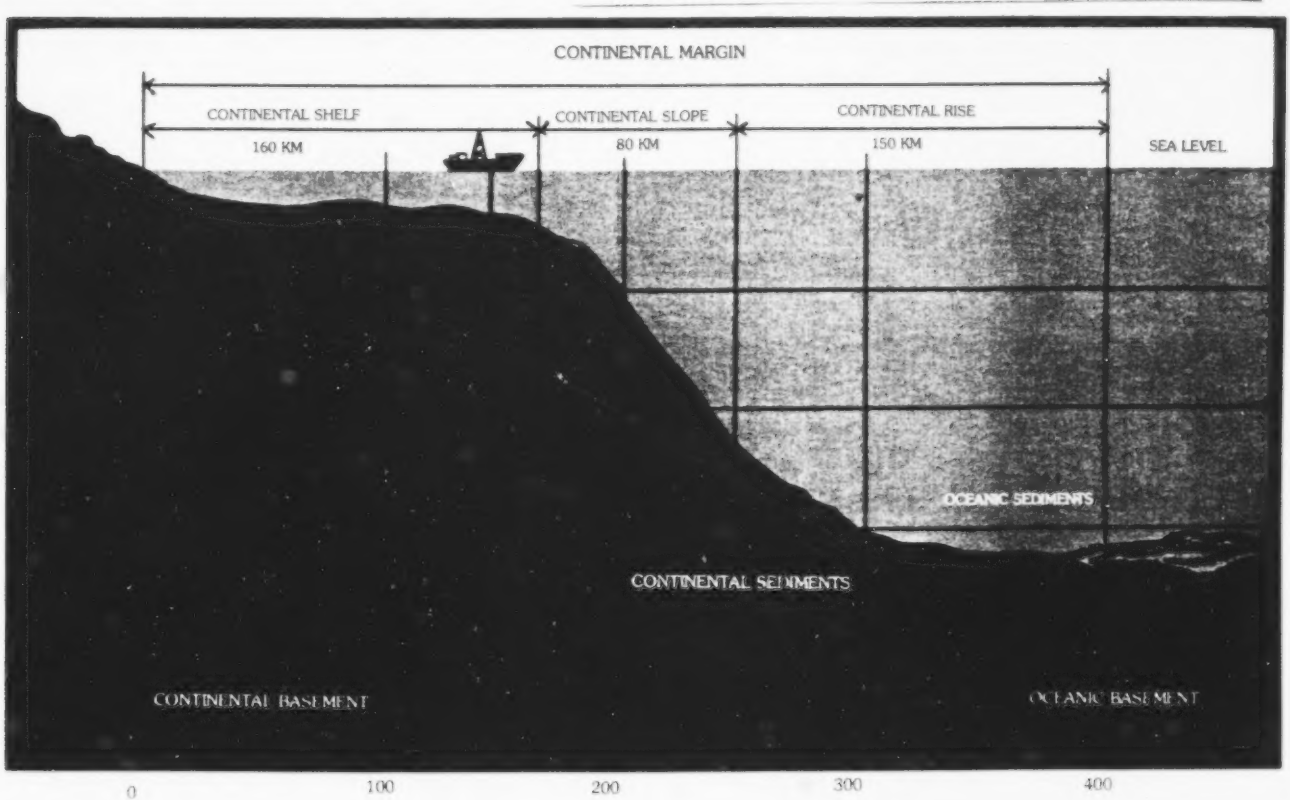

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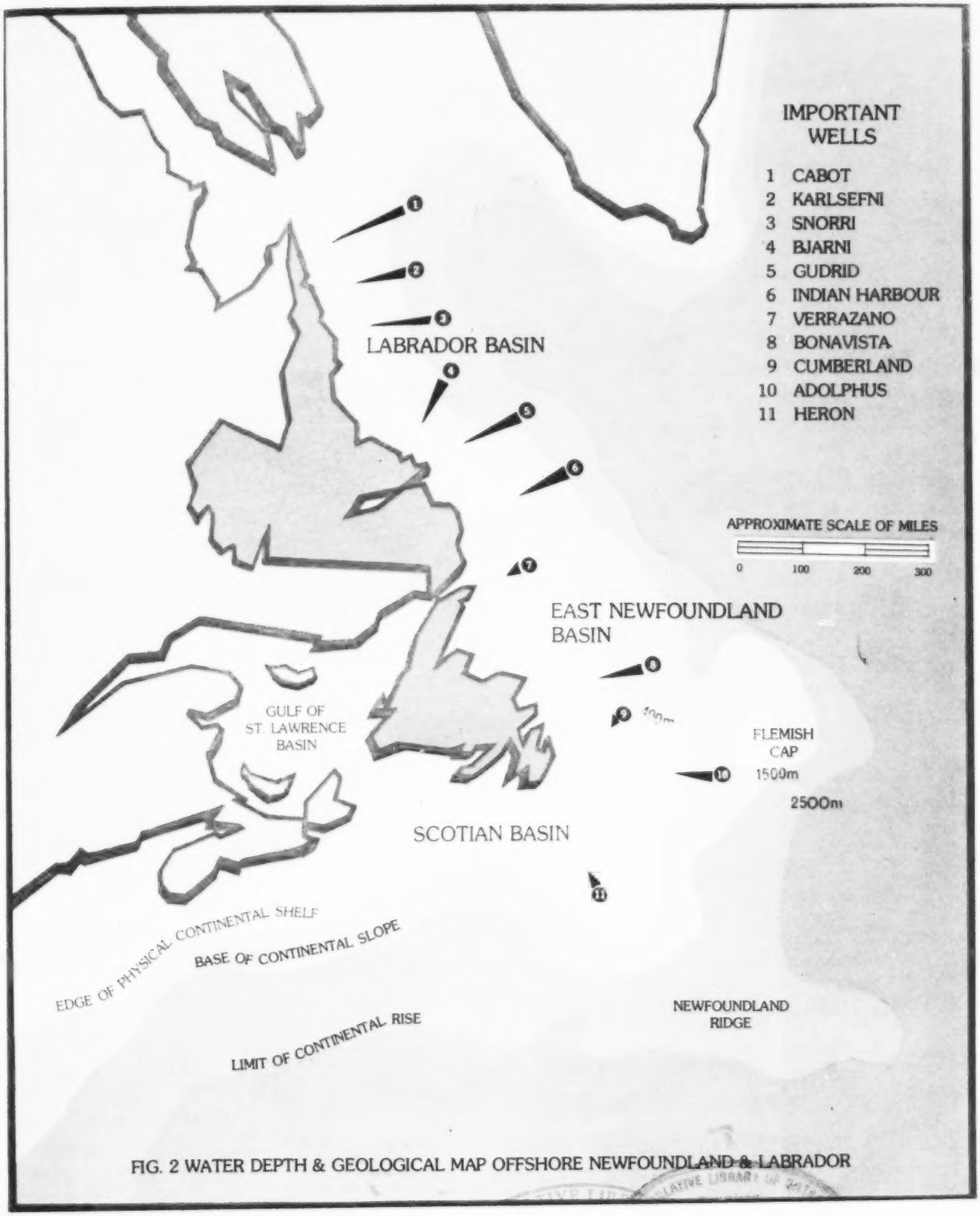


FIG. 2 WATER DEPTH & GEOLOGICAL MAP OFFSHORE NEWFOUNDLAND & LABRADOR

On the basis of these surveys, oil companies have drilled 54 wells off the coast of Newfoundland and Labrador since 1967 (Figure 2). Thirty-four of these were drilled on the Grand Banks, eight in the East Newfoundland Basin and twelve off Labrador. Two non-commercial oil finds were made on the Grand Banks and drilling off Labrador resulted in three significant gas discoveries named Bjarni, Gudrid, and Snorri. Further drilling will be necessary to determine whether these three discoveries are commercial.

These wells, which may go down to 14,000 feet below the bed of the sea, have provided the oil companies with rock chips and cores, giving them an idea of the geology of the seabed.

These wells were drilled by either highly sophisticated drilling rigs or a drillship such as that shown on the cover. The drillship's propellers and side thrusters, which are controlled by a computer, keep the vessel positioned over the well without the need of anchors. On the other hand, the drilling rigs used off Labrador need "quick release" anchoring systems. Both drillships and drilling rigs can quickly move off the well location to avoid collision with icebergs. Exploration drilling rigs which will withstand pack ice and drill year round even off Labrador are under development, but are some years away.

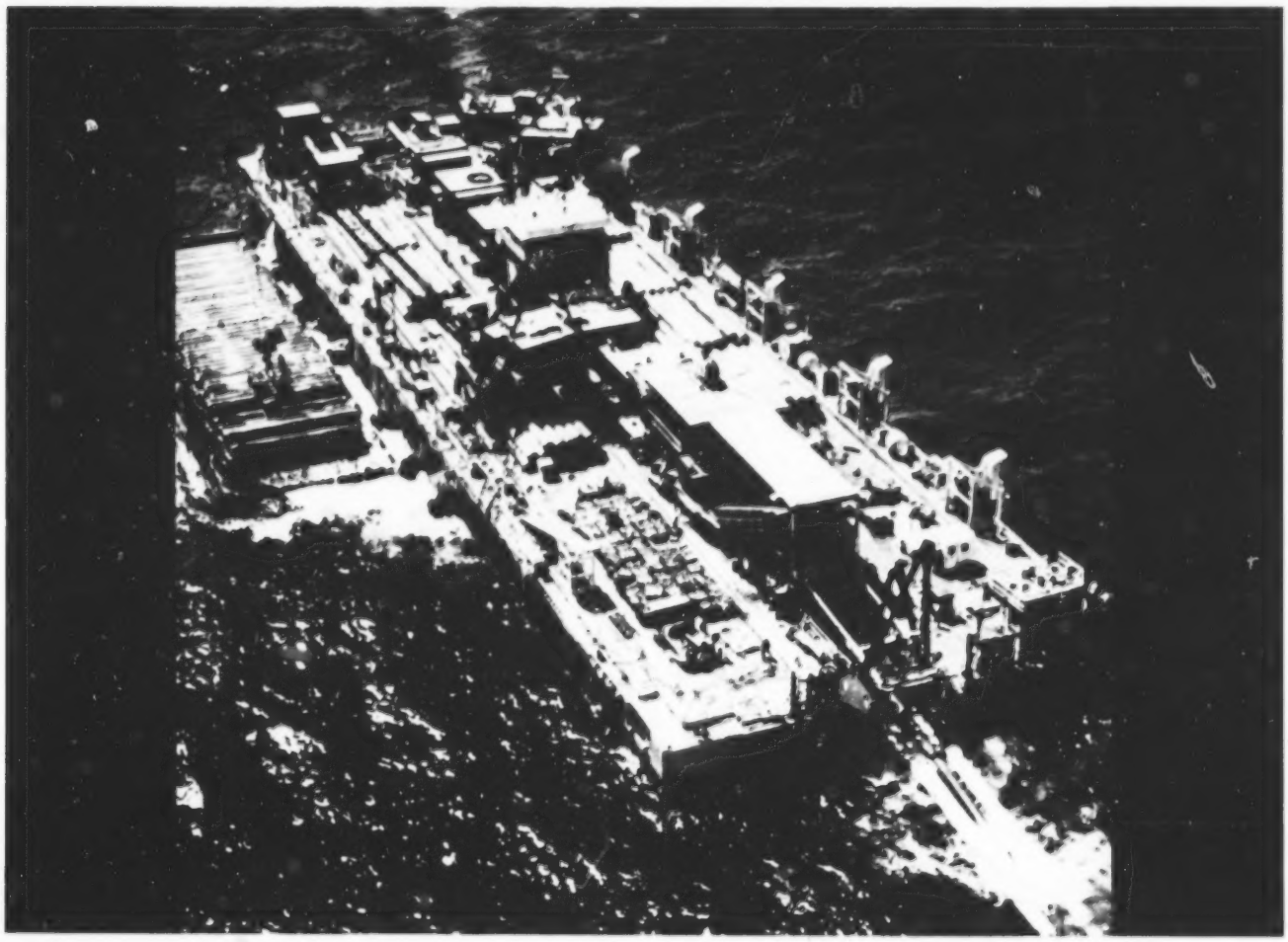
Once a commercial discovery has been made, a production and transportation system must be put in place. In other offshore areas, a variety of complex systems are used, including giant steel and concrete platforms which permanently rest on the sea bed and are connected to shore by pipeline.

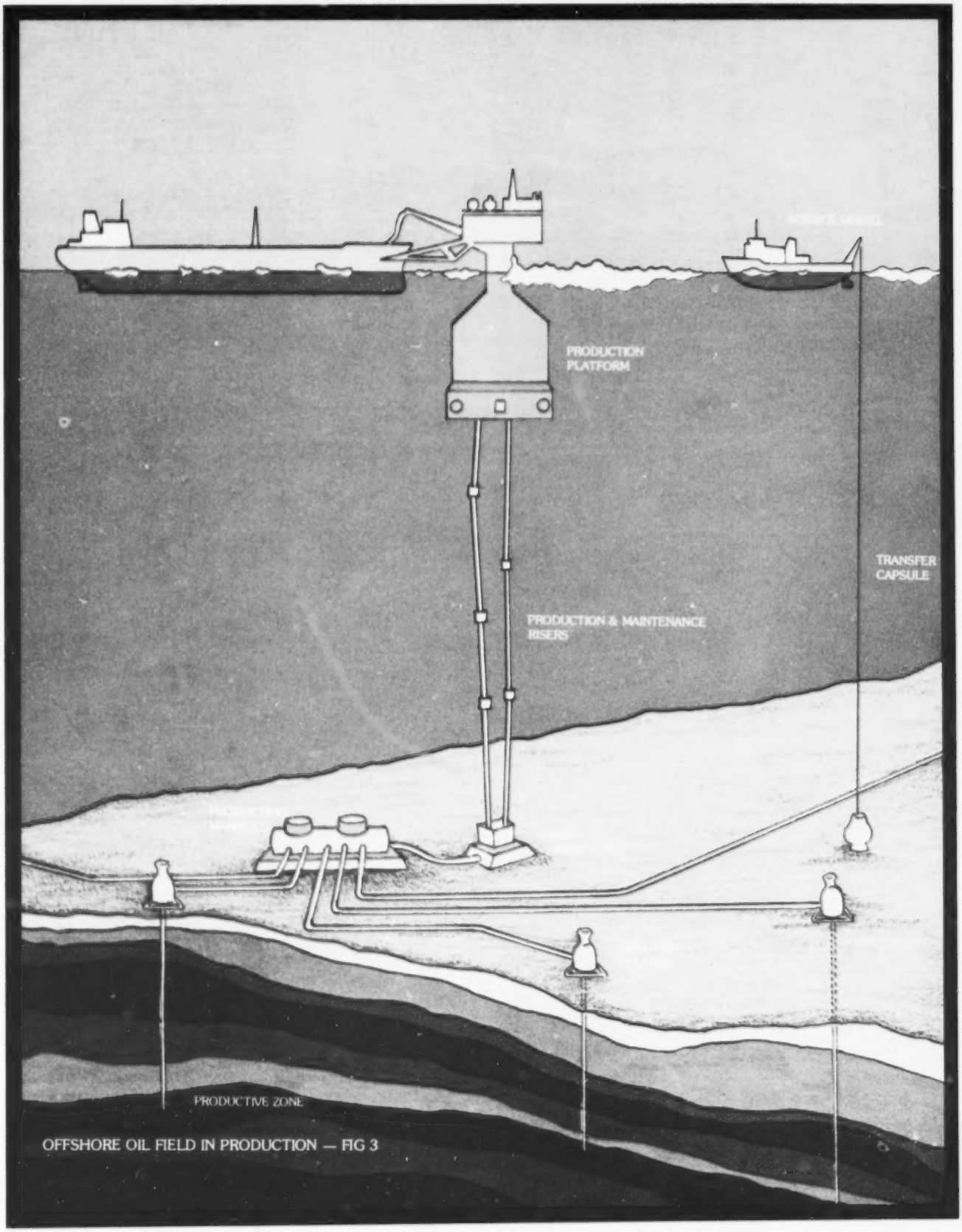
Because of deep water, icebergs and pack ice conditions, the oil companies may not be able to use such systems off Northeast Newfoundland and Labrador. These problems require fresh solutions.

Figure 3 opposite shows the layout of an offshore oil field using a solution suitable for many locations: a floating concrete production platform would withstand the pressure of pack ice and move to avoid icebergs; the wellhead equipment is not buried to avoid iceberg scour because of water depth; any oil or gas production would be loaded directly into a tanker.

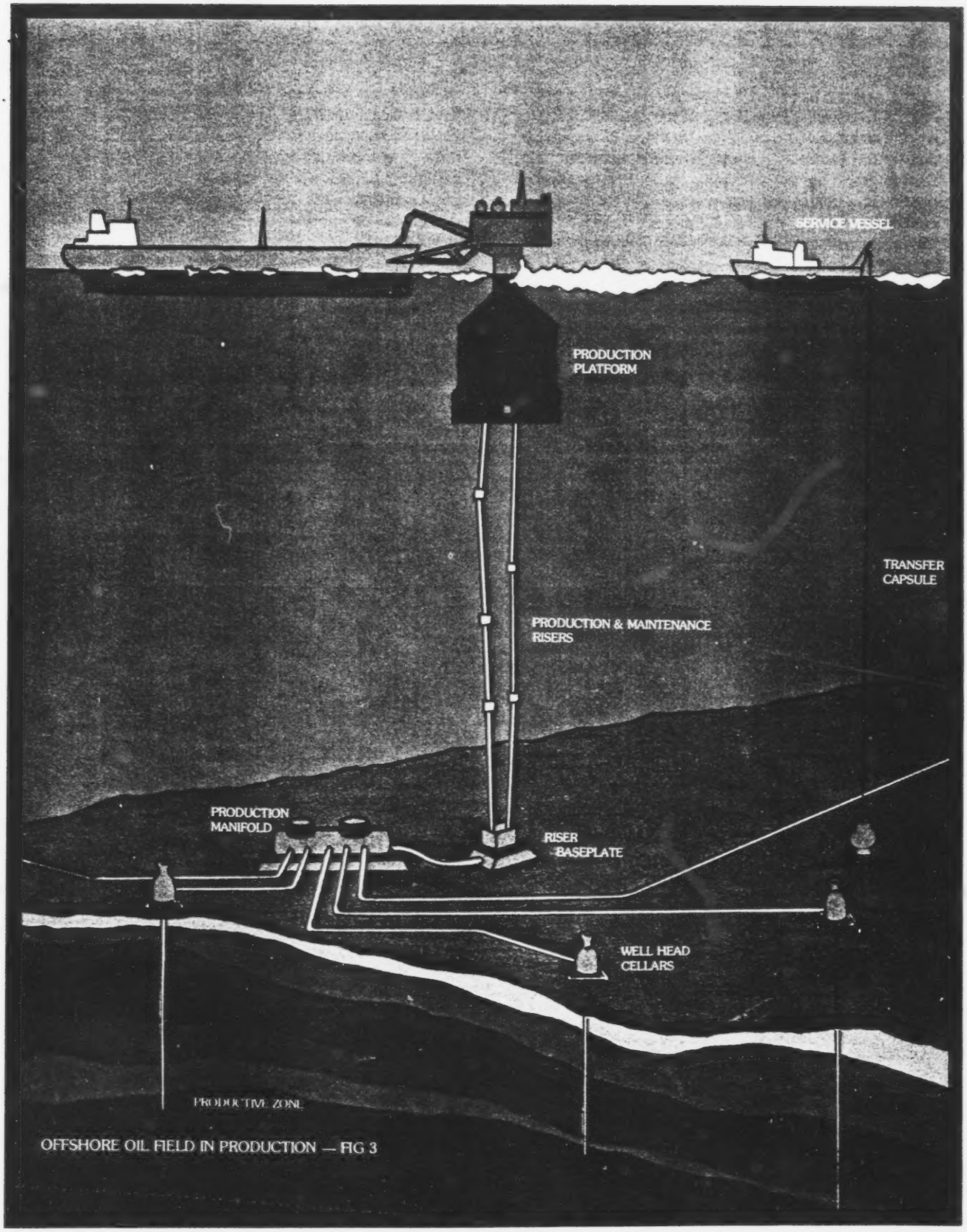
Such a system might well prove feasible but the exact type of system which will be used is not yet known. However, the oil companies are spending large sums to solve these problems. Technological developments take place rapidly in the offshore oil and gas industry as can be seen by recent developments in the North Sea. A safe, economical solution may not take that long to develop.

OFFSHORE PIPE LAYING OPERATION.





OFFSHORE OIL FIELD IN PRODUCTION — FIG 3



OFFSHORE OIL FIELD IN PRODUCTION — FIG 3

THE IMPACT OF OFFSHORE OIL & GAS: The Benefits of Controlled Development.

In the past, up to $45 million has been spent in a single year off the coast of the Province of which only about five to ten percent was actually spent in the Province. Given proper controls by the Province, it is estimated that oil-related expenditures made in the Province could rise to several hundred million dollars per year as early as 1982, assuming the confirmation of a commercial discovery in 1978.

The pattern of job creation and investment related to the development of an offshore oil or gas field would be similar to that which took place during the construction of Churchill Falls. Most of the activity would take place during the construction phase. Some of the goods and services in high demand during this period would include pipe, machinery and equipment, fuel, food products, stevedoring, transportation, hotels, housing and recreational facilities. In addition, there would be an extremely heavy demand for certain skills such as seamen, machinists and welders. It would also be necessary to upgrade the Province's road network, its airports and marine facilities. Unless care is taken, all this activity could put the Province as a whole under great social and economic stress.

Figures 4 and 5 below show how long it would likely take to develop both seasonal oil production and year-around oil or gas production off northeast Newfoundland and Labrador.

FIG 4 DEVELOPMENT TIME TABLE -- Seasonal Oil Production *

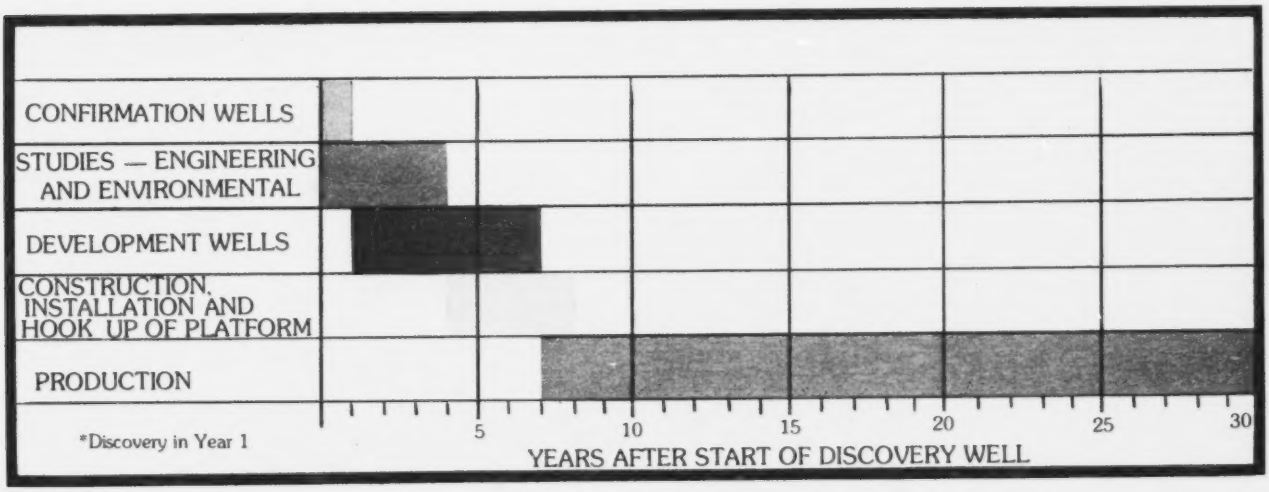
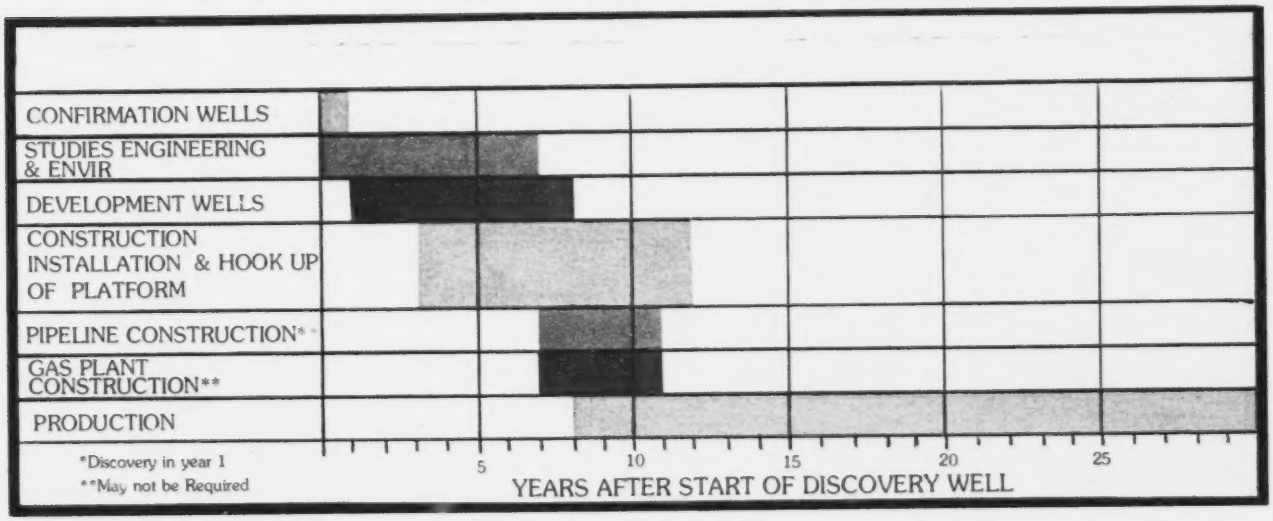


FIG 5 DEVELOPMENT TIME TABLE — Year Round Oil Production *



As can be seen from the seasonal oil production schedule, a commercial oil discovery in 1978 would mean that large scale investments could begin as early as 1982. This does not give us much time to plan.

Figure 6 is based on a computer study of the effects of the development of just five major offshore oil or gas fields.

Figure 6 contrasts the development of the five fields in a "boom and bust" manner and in a controlled manner. In the "boom and bust" case, the start of development of the five fields would come at one year intervals, giving a very sharp rise in expenditures to a very disruptive level of more than $1.4 billion in a single year; thereafter, it would fall just as sharply. In the controlled case, the development of the five fields is regulated by the Province with the start of development of the fields staggered at three year intervals. In terms of investment made on labour, goods and services from within the Province, the controlled case gives:

(1) the same level of investment in the short term (1977 to 1984) (i.e., a level determined by the short term capacity of our economy);
(2) a more moderate but still massive level of investment over the medium term (1984 to 1992); and
(3) a much higher level of investment over the longer term (1992 to 2015).

Moreover, the development of the five fields in a controlled manner would mean that several billion more dollars worth of investment would be spent directly in the Province over a longer period. Controlled development is not only less disruptive, but would mean more jobs and benefits for the people of Newfoundland and Labrador over a longer period.

For instance, in the short term, the amount of jobs and benefits generated in the Province by either a boom and bust or controlled situation would be about the same because the Province simply could not absorb more than a certain amount. In the boom and bust case, most benefits and jobs would flow out of the province and probably even out of Canada. For instance, if 50 new ice-breaking supply boats were required within five years, then Newfoundland could build say only five, and the remainder would come from abroad. If, on the other hand, they are required over ten years, then Newfoundland could supply perhaps ten from our existing yard and perhaps even have time to build a second yard to supply part of the remaining 50.

It is critical, then, that the Province be able to influence both the rate of development and the percentage of total offshore investments which is spent within the Province because federal control and regulations would not require the companies to spend the maximum amount possible in the Province. This is another reason why the current debate over the Province's draft oil and gas regulations is so important.

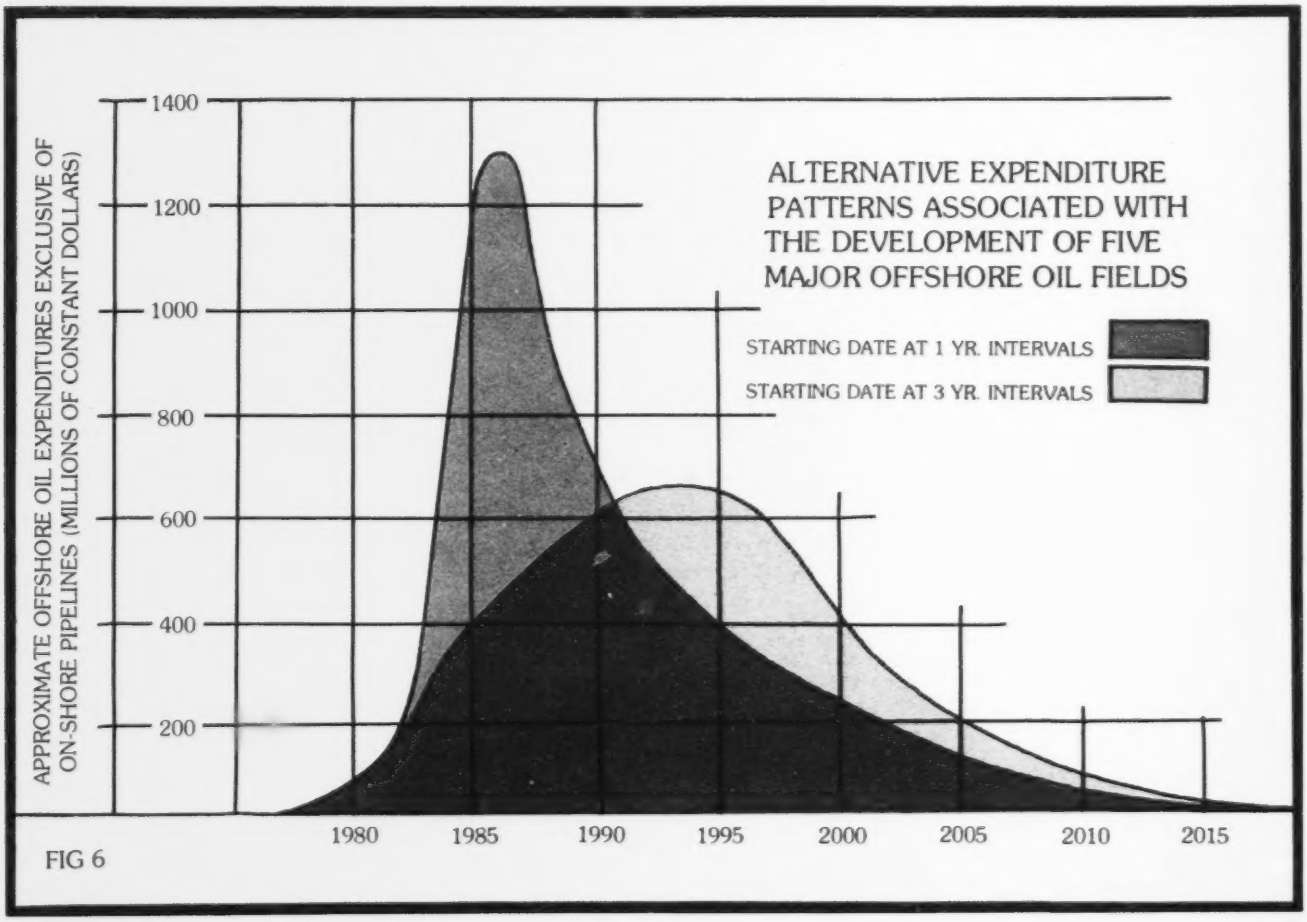


FIG 6

OFFSHORE REVENUES: The People's Share

Offshore oil and gas will also mean large direct revenues to Government. But to maximize those revenues, we must carefully manage the resource. Figure 7 below shows the breakdown of revenue which might possibly result from each barrel of oil produced from a major offshore oil find. Although the exact cost of development is not yet known, the approximate size of each share would probably be similar to that shown below. Figure 7 assumes we would get 100% of the revenues collected by a set of regulations similar to those presently proposed by Ottawa, i.e., about $3.00 per barrel.

It is important to note, that under such regulations, even if the Province were to win the offshore minerals court case, Ottawa could still receive about as much as the Province, i.e. up to $3.00 per barrel, through its federal corporate income tax.

Figure 7 shows how a projected wellhead value of $13.00 per barrel would be divided between the company, the federal government and the Province. To begin with, the company has to receive about $3.00 per barrel to pay for the exploration, development and production costs of the oil field. Consequently, the three parties would be in a position to divide about $10.00 per barrel among themselves. The total amount paid by the companies to both Ottawa and the Province is called the Total Government Take. How will it be shared?

The share that Newfoundland would receive if it won in court would depend on the terms and conditions attached to the permits and leases issued to the oil companies. Obviously, the Province should pass regulations to ensure that the Province receives a fair share as owner of the resource. In addition, complicated tax problems need to be worked out with Ottawa as to the exact manner in which federal corporate income tax will apply. The Province's eventual share will depend in large part on our success in those negotiations.

Obviously, companies will need a fair return on investment in order to make their efforts worthwhile. Furthermore, the Federal Government of Canada should receive a fair share through the federal corporate income tax. However, should the Province's share be only $3.00 per barrel as shown in Figure 7? Should Ottawa receive as much as the Province? Should companies really receive $4.00 a barrel in addition to their costs? Are the regulations currently being proposed by Ottawa really tough enough?

Under the recent agreement between the Maritime Provinces and Ottawa, those provinces accepted the proposed federal regulations. In addition, they will not share at all in monies collected by Ottawa under its federal corporate income tax or through Petro Canada's share. The Maritime Provinces will really only get 75% of the "royalties" collected under the proposed federal regulations. In fact, Ottawa will actually end up with 75% of the Total Government Take. Clearly this is unfair. When someone offers you 75% of something, it is best to ask, 75% of what?

Our regulations must ensure that the provincial share is larger than just $3.00 per barrel, let alone 75% of just royalties.

Detailed calculations have been made in order to compare the revenue collected under the draft regulations recently proposed by the Province with the terms and conditions applicable in other areas of the world. Companies are already exploring offshore West Greenland under a financial system that, in fact, would collect more revenue than our proposed system. Companies are also exploring offshore Baffin Island under the same terms and conditions proposed for offshore Newfoundland and Labrador by Ottawa and offshore Baffin Island is far more expensive to explore and develop than the Province's offshore. The burden that the Province eventually places on the companies must, of course, include sufficient incentive for the oil industry to actively explore offshore Newfoundland and Labrador.

However, it should be realized that if commercial finds are made, given the large volumes of oil and gas involved, a relatively small difference in our per barrel income could mean the loss of many hundreds of millions of dollars. Extreme care must be the order of the day.

FIG 7 The Breakdown of Oil Revenues on a Per Barrel Basis

PREVENTING A "BOOM & BUST"

Possibly the greatest benefit of offshore oil and gas will come through the broadening of our economic base through the addition of new industry. To achieve this, we must ensure that all offshore activities are based in the Province and, where feasible, any offshore oil and gas produced is refined, processed and used within the Province. However, we must also ensure that the public revenues accruing to the Province from these developments are invested wisely in such renewable resource areas as our fishing industry. With these revenues, we will also be able to create other new employment opportunities and the training programs necessary to ensure that residents of the Province fill them.

While these are exciting prospects, there is a danger that if the Province does not have the power to control the rate and type of offshore oil and gas development, many industrial and employment opportunities will be lost and the negative impacts increased.

In many countries, offshore oil and gas developments have taken place in a "boom and bust" manner. Such an approach would be bad for our Province, particularly for such rural areas as the Coast of Labrador and the Northeast Coast. Tremendous demands would likely be placed on the Province's ability to provide adequate roads, schools, housing, recreation facilities, water and sewage and other services. Indeed, it might not be possible for the Province to meet these demands, especially in the short term. At best, a boom or bust situation would result in the construction of substandard facilities or company towns with a short life span.

The excessive demands of a "boom and bust" situation would also create high inflation in a small economy such as ours and only the people working in such highly paid sectors as the offshore oil and gas industry would be able to cope with its effects.

The Province must also guard against the possibility of pollution which would be made all the more likely by a "boom and bust" development. Our fishing industry, the key to our long term future, cannot be allowed to suffer to achieve the unnecessarily rapid development of our offshore oil and gas resources.

More than anything else, we must not allow ourselves to be pressured into developing these resources too fast or in the wrong manner. The industry and revenues associated with offshore oil and gas can be the means whereby our industrial base, including the fisheries, can be revitalized. We must ensure that this opportunity is not squandered.

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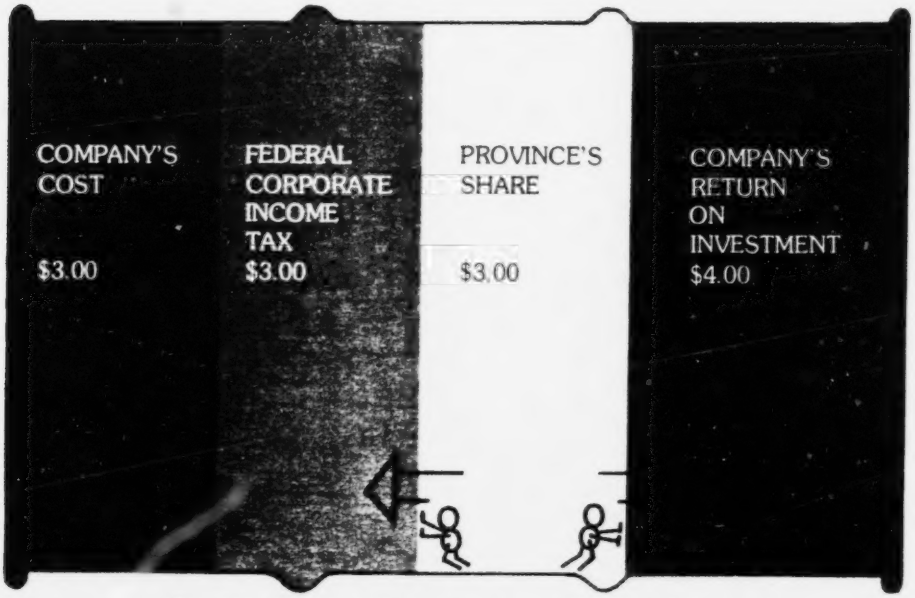

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A large part of the impact of offshore development will be felt as a result of related onshore activities. The questions posed by these activities make Provincial ownership of offshore oil and gas an absolute necessity. Will residents of the Province be given preference in oil-related employment? Will supply bases and large construction and fabrication sites be located in the Province, and where? Will oil and gas be landed, processed and used within the Province? The answers to these practical questions will determine Newfoundland's future. We cannot leave the answers to Ottawa if this Province is to remain a distinct and viable community within Confederation.

Moreover, Ottawa is too remote to deal properly with the conflicts that will arise between the oil industry and our traditional industrial base. The very basis of Confederation dictates that Ottawa should not be in a position to determine the rate at which our Province's economy and society must absorb this new industrial sector. There is no question that Federal control would mean that our offshore oil and gas resources would be developed at a rate and under conditions which would more reflect the needs of central Canada than those of Newfoundland and Labrador.

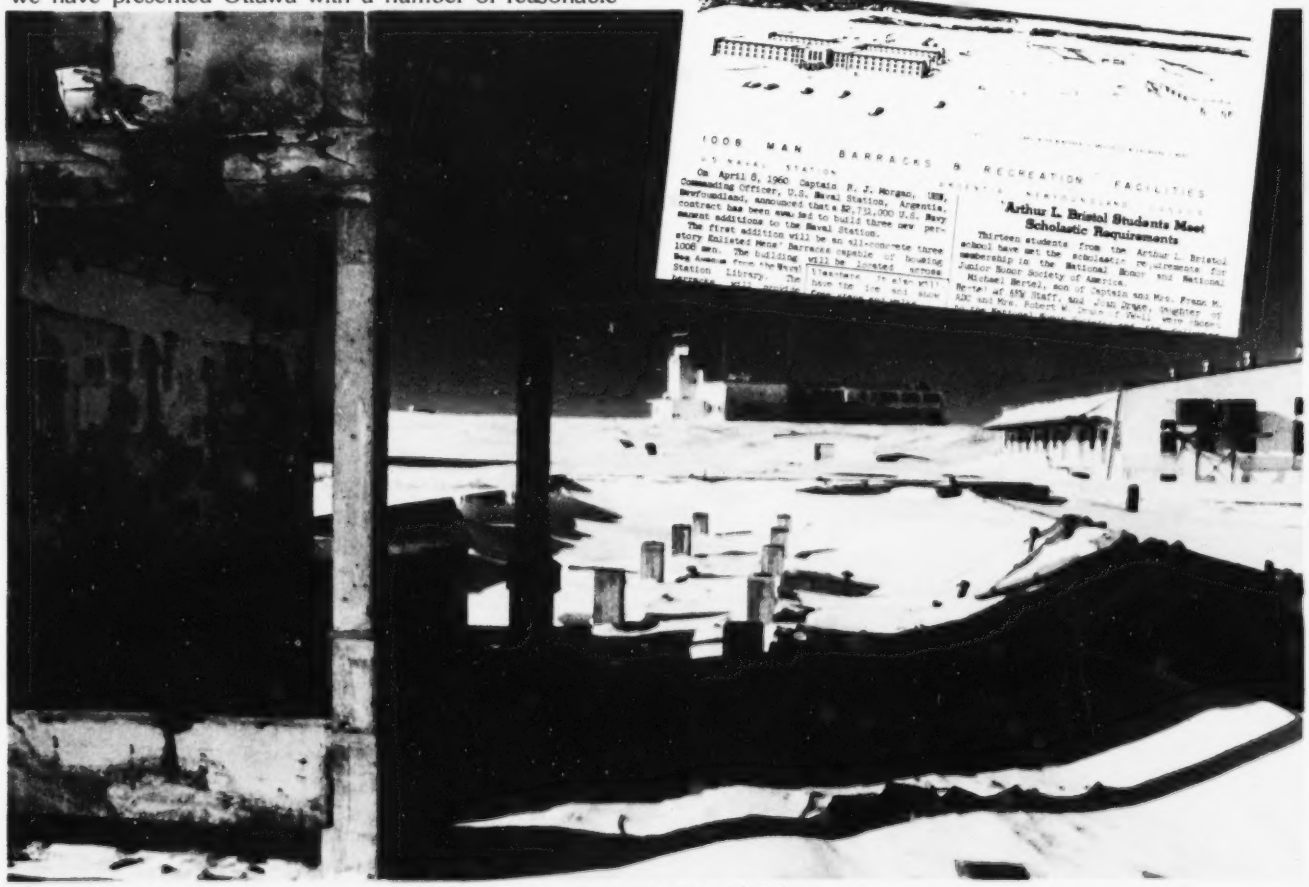
WHY COURT IS NECESSARY

In many ways the coming of offshore oil and gas is comparable to the construction of the U.S. military bases in World War II, but on an even greater scale. No one can doubt the benefits that the building of those bases brought, but a lack of planning and control prevented Newfoundland from maximizing her benefits from the bases. In the case of the bases, the need to win a war and the lack of a democratically-elected Government prevented the people of Newfoundland and Labrador from having a proper say. In a repeat of history, Ottawa now says that the "energy crisis" and the wording of the Terms of Union mean that we will have no control over offshore oil and gas developments.

While we can agree that these resources should be developed for the overall benefit of Canada, surely this does not require that we destroy the social and economic fabric of Newfoundland and Labrador? Our first responsibility must be to protect our culture, our environment and our traditional industries.

The Government of Newfoundland and Labrador has always felt that morally and legally, these resources are ours, part of our heritage. However, despite our strong legal case, we have presented Ottawa with a number of reasonable proposals for a political settlement. These proposals would have given Ottawa and the Province an equal say in controlling offshore developments. However, Ottawa will concede the Province little more than a purely advisory role in the management of the resource. This attitude is difficult to understand in view of the ways in which this industry affects areas of obvious Provincial concern such as industrial development, social disruption and provincial autonomy.

Faced with Ottawa's inflexible stand, we are now preparing to take our case to the Supreme Court of Canada.


FOGHORN
U.S. NAVAL STATION-ARGENTIA, NFLD.
U. S. NAVAL STATION, ARGENTIA, NFLD.
ADMIRAL KEHART BREAKS GROUND FOR NEW BARRACKS
1008 MAN BARRACKS & RECREATION FACILITIES
Arthur L. Bristol Students Meet Scholastic Requirements

ARGENTIA NAVAL BASE (NORTH SIDE) FEBRUARY 1977.

THE BASIS OF OUR OFFSHORE LEGAL CASE

The Province's offshore oil and gas rights are not based on recent legal developments. Our right to these resources is based directly on the outcome of a number of well-known pre-Confederation political and constitutional struggles in which our forefathers were remarkably successful in protecting the territorial integrity of the Province and their rights to the marine resources of the surrounding seas.

It is important to remember that the law of the sea upon which our claim is based has varied greatly over the ages. The seas have always been the cockpit of the struggles between the great powers and those struggles were reflected in the law of the sea on the right of a coastal state to the marine resources of the seas surrounding it. This is very important, because the mineral rights each Province now holds were determined by the rights it held just before it came into Confederation.

The various provinces joined Confederation at different times; for instance, the original four provinces of Ontario, Quebec, New Brunswick and Nova Scotia in 1867, British Columbia in 1871 and Newfoundland not until 1949. Thus, unlike any other Province, Newfoundland's pre-confederation offshore oil and gas rights were not those of a 19th century colony, such as British Columbia in 1871, but those of a 20th century, self-governing British Dominion, with all the rights of a sovereign state, in 1949.

> *"Very able writers on abstract law have differed both as respects the right of dominion over particular parts of the sea and also as to the distance from shore over which a nation holding the land might exercise the rights of sovereignty . . . It will be hoped that those contradictions which may have been observed in the best writers are to be reconciled by an attention to the characteristic circumstances of the different ages in which they thought and wrote and by an allowance for the influence which the fluctuating relations, the jarring interests, and the various modifications of the claims and the pretentions of nations cannot fail to produce, even in the most reflecting mind."*
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> Judge Uniacke of the Vice Admiralty Court of Nova Scotia in the 1818 case of the Ship "The Nabby."

The following fold-out shows in pictorial form, how our offshore mineral rights have evolved over time and is designed to give the casual reader a quick, concise picture of our case. On the opposite page we will begin to look at the historical evolution of our case in some detail. It is hoped that not just lawyers and amateur historians but the interested citizen will take time to study this detailed section. Our general discussion will start again on page 26.

You shall see that as far as the law respecting offshore minerals is concerned, the wheel has, in one sense, come full circle since our forefathers started to settle the new found land. John Guy's grant of 1610 with its claim to all the wealth of the seas, both fish and minerals, out to 30 miles may well have seemed strange in more recent times when the idea of "the freedom of the seas" beyond 3 miles ruled supreme. However, the Crown of England did not give up its age old claim to the minerals of the bed of the adjacent seas even though its powers with respect to fisheries and navigation came to be restricted to the 3-mile limit. By 1949, international law had developed the present continental shelf doctrine in support of such claims to subsea minerals.

Simply put, our case, in part, is this:

(1) that by the common law of England, the Crown has from time immemorial claimed ownership of the bed of the sea surrounding England (and the Crown's overseas Dominions) extending seaward without limitation, in absence of any international law limiting such rights and there was no such limit;

(2) that, in any event, by 1949, international law, quite apart from the common law, established that each coastal state was entitled to the minerals of its continental shelf;

(3) that in 1949, Newfoundland was, or had all the rights of, such a coastal state;

(4) that by Term 37 of the Terms of Union, Newfoundland, the Province, retained after Confederation all of the continental shelf minerals that Newfoundland, the coastal state, had held prior to Confederation, either by common law or alternatively, by international law.

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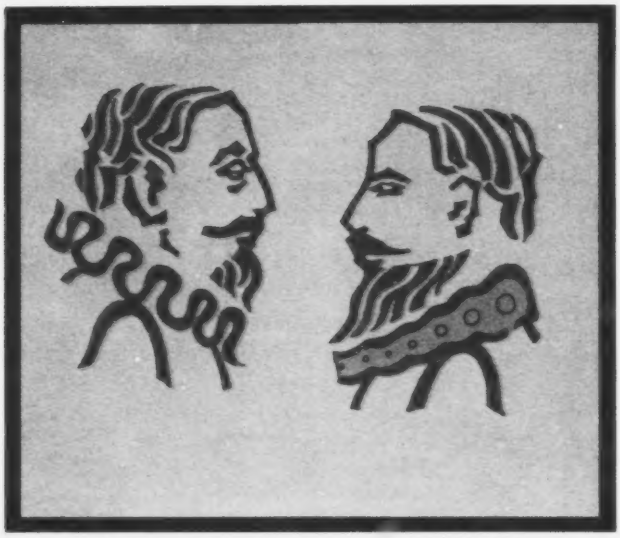

1605-1635 THE DUTCHMAN GROTIUS VS THE ENGLISHMAN SELDEN IN THE DEBATE ON OFFSHORE RIGHTS.

NEWFOUNDLAND IN DISPUTE — GILBERT CLAIMS NEWFOUNDLAND FOR ENGLISH CROWN — NEWFOUNDLAND IN DISPUTE

1497 — 1583 — 1609 — 16

NATIONS CONSIDER IT LAWFUL TO CLAIM THE SEA AND ITS RESOURCES WITHOUT LIMIT.

GROTIUS PUBLISHES HIS MARE LIBRUM IN WHICH HE ARGUES THAT FISHING AND NAVIGATION RIGHTS SHOULD BE FREE TO ALL.

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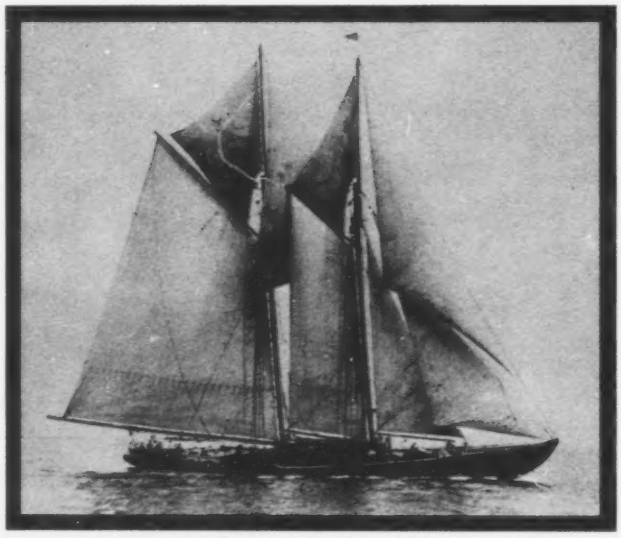

1920's-30's RUM-RUNNERS FORCE USA TO ATTACK THE 3 MILE RULE AND THE FREEDOM OF THE SEAS.

NEWFOUNDLAND'S RIGHTS AS SELF-GOVERNING DOMINION START TO EVOLVE

NEWFOUNDLAND'S DOMINION STATUS CONFIRMED AT IMPERIAL CONFERENCE of 1926

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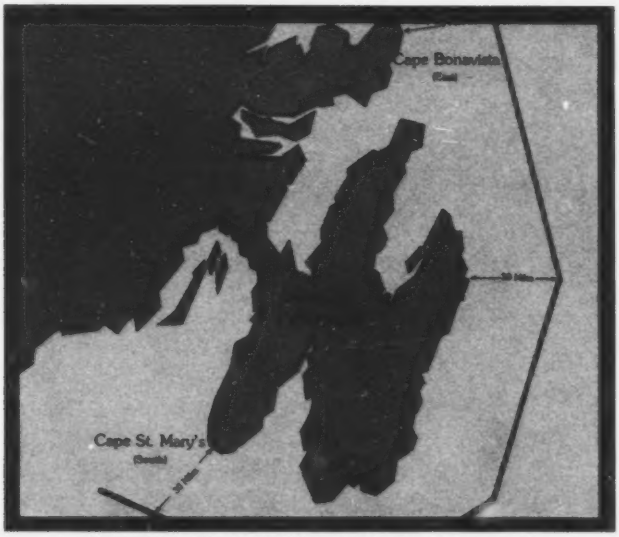
COASTAL STATE SOVEREIGNTY IN 3 MILE LIMIT GIVEN BOOST BY AVIATION CONVENTION

FREEDOM OF SEAS OUTSIDE 3 MILE LIMIT STARTS TO BREAK DOWN



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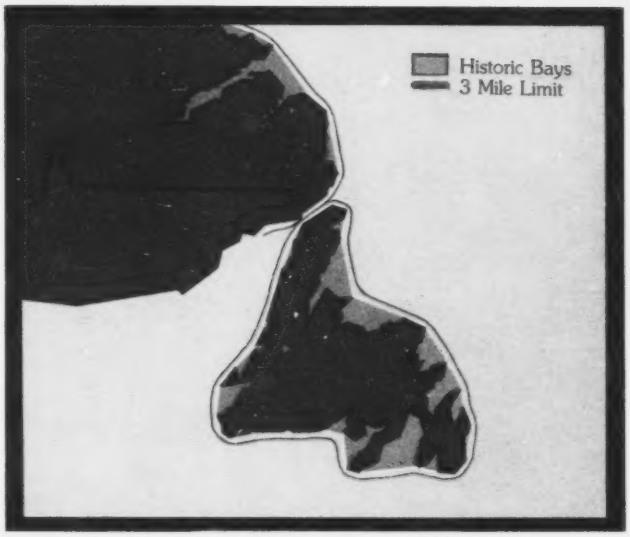

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PLANTATION COMPANIES EMPOWERED TO MAKE LAWS

RULE OF FISHING ADMIRALS

GOVERNMENT BY APPOINTED GOVERNOR AND COMMANDER-IN-CHIEF ALONE

1633

1729

1818

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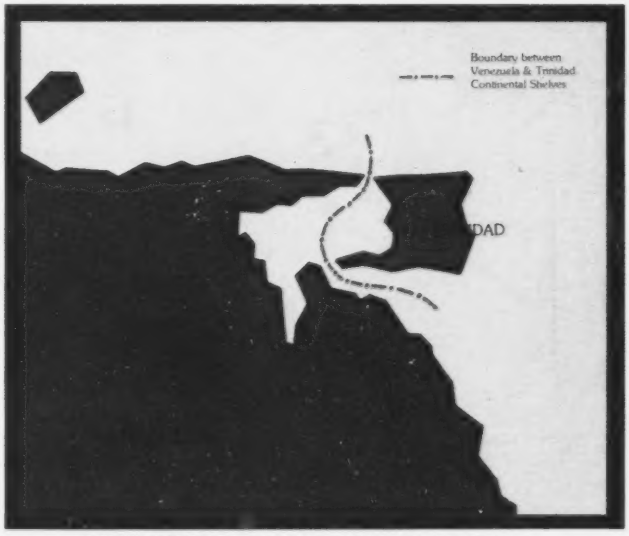

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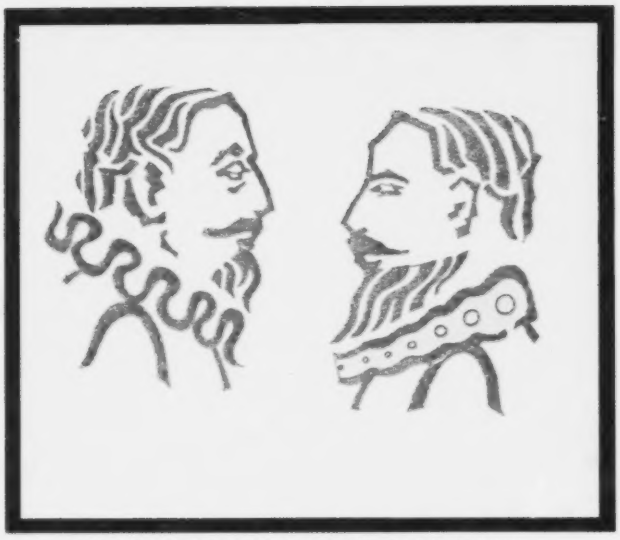

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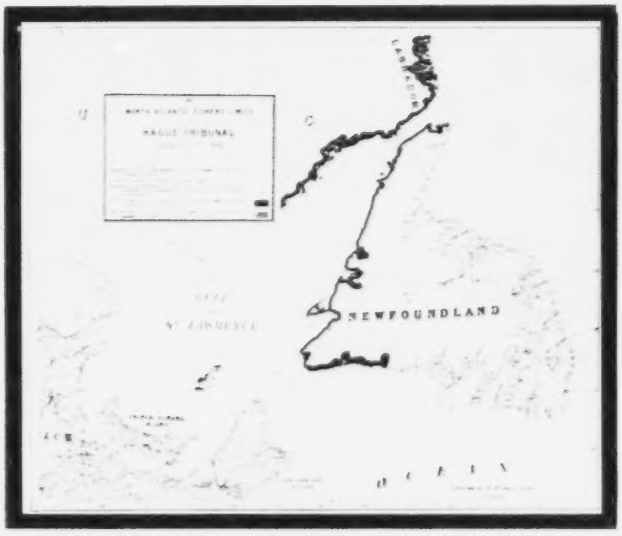

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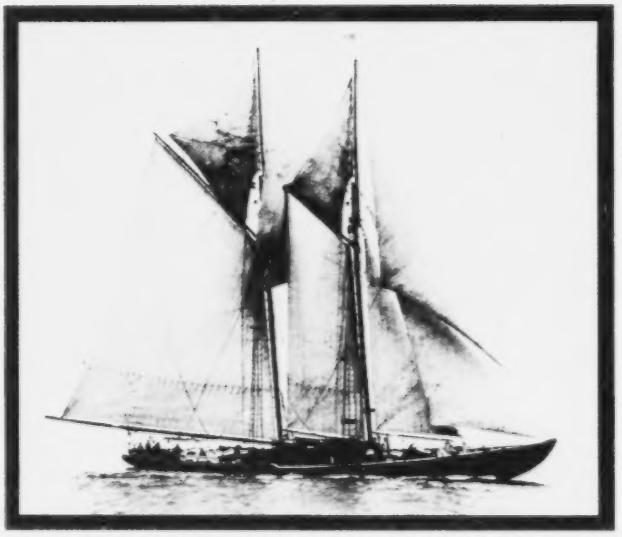

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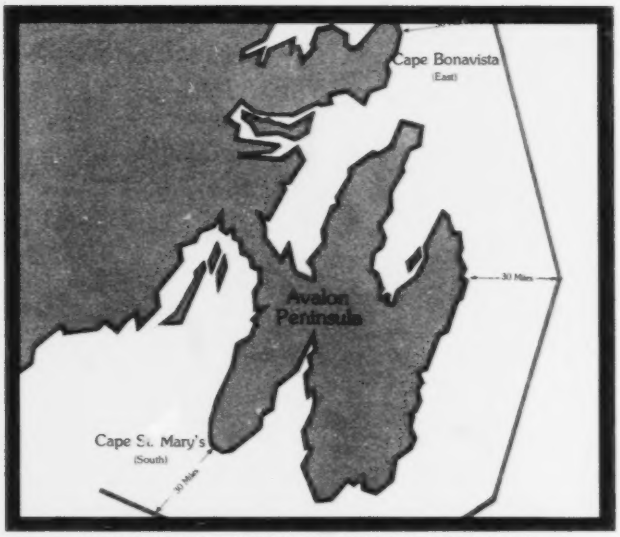

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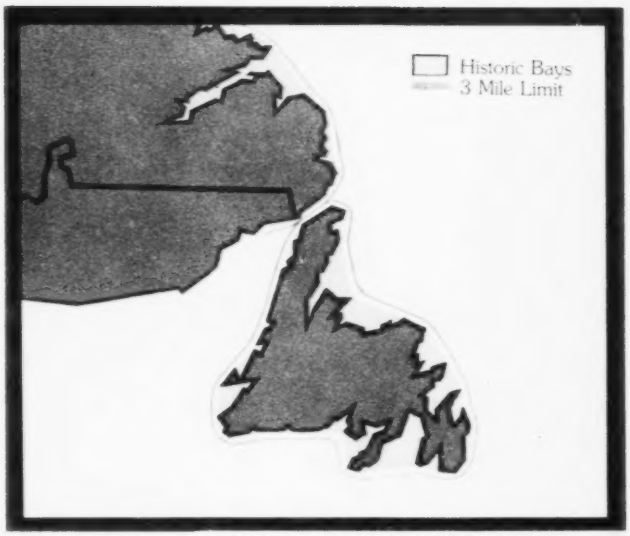

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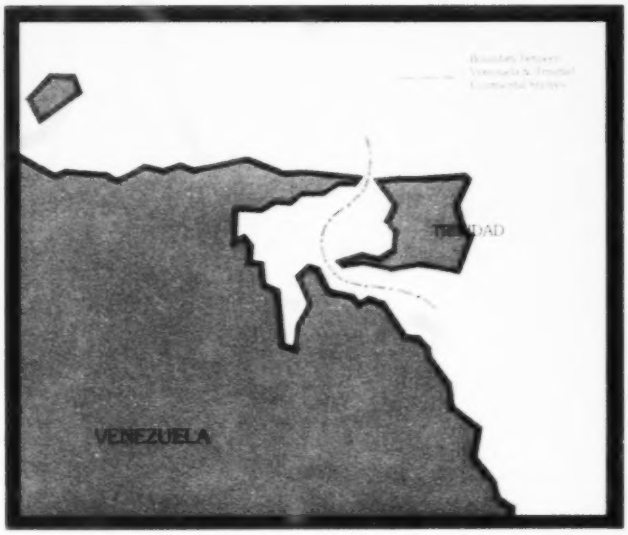

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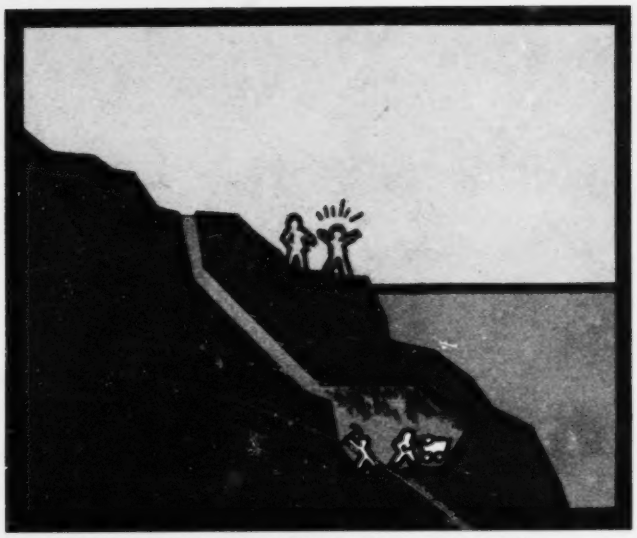

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1876 CAPTAIN KEYN'S CASE. CONFUSION BETWEEN SEA-BED RIGHTS AND RIGHTS OF NAVIGATION.

GOVERNOR APPOINTS COUNCIL OF NEWFOUNDLANDERS TO ADVISE HIM — 1824

NEWFOUNDLAND GRANTED REPRESENTATIVE GOVERNMENT — 1832

NEWFOUNDLAND GRANTED RESPONSIBLE GOVERNMENT — 1855

LABOUCHERE DISPATCH GUARANTEES NEWFOUNDLAND'S TERRITORIAL AND MARITIME RIGHTS — 1857

THREE MILE RULE ACCEPTED FOR FISHING AND NAVIGATION BUT ENGLAND CONTINUES TO CLAIM SEABED MINERALS BEYOND 3 MILES

1943-45 CANADA, USA AND NEWFOUNDLAND MEET TO CLARIFY RULES ON CONTINENTAL SHELF FISHERY AND MINERAL RESOURCES.

1945 PRESIDENT HARRY S. TRUMAN CLAIMS CONTINENTAL SHELF MINERALS FOR USA AND INVITES NEIGHBOURS TO DO LIKEWISE.

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'E RIGHT OF COASTAL
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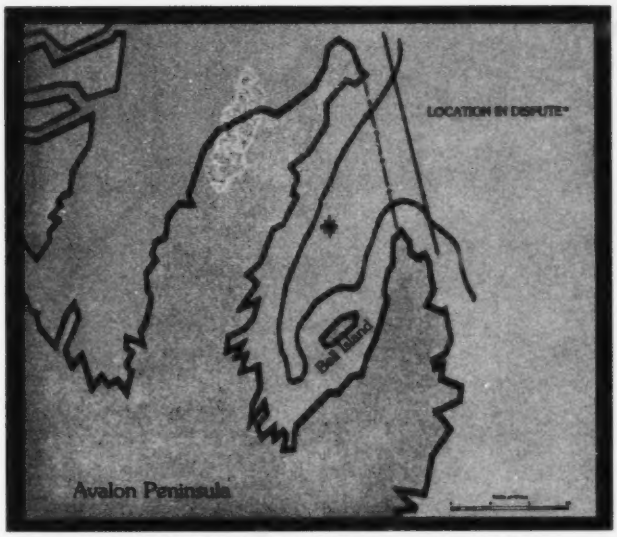

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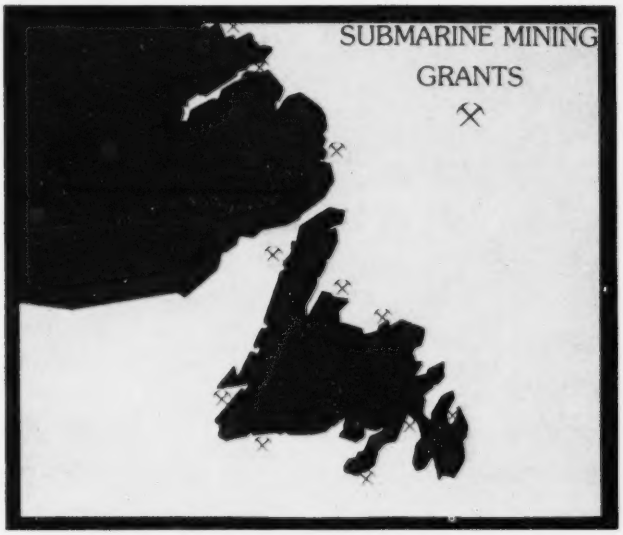

1903 THE CROWN LAND ACT AMENDED TO COVER SUBMARINE MINING GRANTS AND MANY ARE TAKEN OUT

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R VS KEYN RAISES QUESTIONS RE COASTAL STATE RIGHTS INSIDE 3 MILE LIMIT

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BRITISH PARLIAMENT OVERRULES R VS KEYN

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1949 (APRIL) TERMS OF UNION OF NEWFOUNDLAND AND CANADA COME INTO EFFECT.

DOMINION STATUS REVIVED FOR AN INSTANT BY TERM 7 12.59 MARCH 31, 1949.

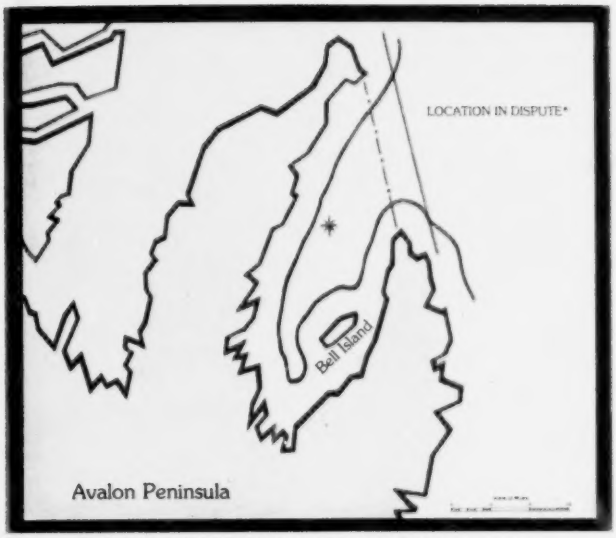
CONFEDERATION WITH CANADA

April 1
1949

1946-48

THE UK, MEXICO, ARGENTINA, COSTA RICA, CHILE, GUATEMALA, NIGARAGUA, PERU, AND THE PHILIPPINES CLAIM CONTINENTAL SHELF — NO PROTESTS

THE CONTINENTAL SHELF DOCTRINE GOOD LAW!!



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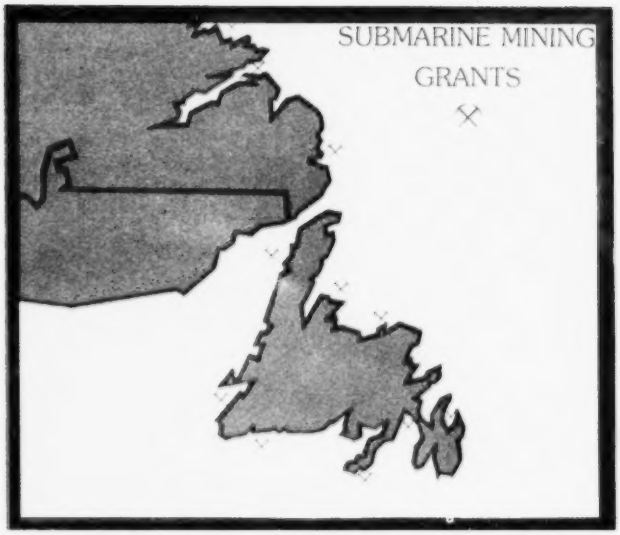

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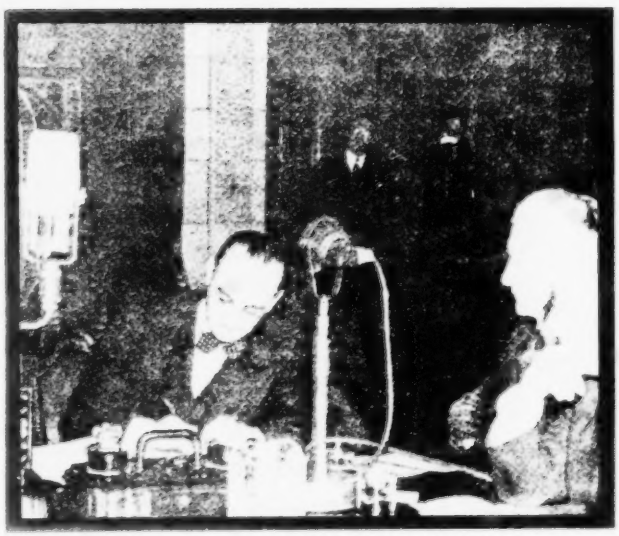

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THE CONTINENTAL SHELF DOCTRINE

AN OUTLINE OF OUR OFFSHORE LEGAL CASE

ADAPTED FROM BLAEU'S MAP OF 1660

The development of the law of the sea stretches back to Queen Eleanor of Aquitaine's Laws of Oleron introduced into England by Richard I in 1190 and to the laws of other sea-faring civilizations lost in the mists of antiquity. However, modern international law of the sea can be said to date from the beginning of the 17th century at the time when settlement in Newfoundland was just beginning.

In the late 15th century, Portugal and Spain sought to divide the world's seas into Portuguese and Spanish lakes. Spain was to have the western portion of the Atlantic, the Gulf of Mexico and the Pacific. Portugal claimed the Atlantic south of Morocco and the Indian Ocean. Seeking to avoid the Spanish sphere of influence, John Cabot sailed north in search of land and a route to the Orient, thus finding Newfoundland in 1497.

In the 16th century, England's claim to the ownership of her adjacent seas caused a great struggle for sea power between Holland and England. England used headland to headland baselines to close off large bays, the so-called "Kings Chambers", and levied a tax on the rich North Sea herring fishery off England and Scotland. The Dutch took exception to this English version of the "law of the sea" and naval battles raged from the English Channel in the south to Spitzbergen in the north. By the early 17th century, the British, led by the lawyer Selden, were claiming that vast stretches of the North Sea, the Irish Sea, the English Channel and the Western Approaches were "closed seas", subject to the complete sovereignty of England.

In addition, England claimed the seas off Newfoundland as reflected in Guy's Charter of 1610 which granted him the seas off the Avalon Peninsula out to 30 miles. The existence and importance of the Grand Banks (i.e. the continental shelf) was well known even then.

> "It is well knowne that from the Newfoundland, unto a place called the Banke, which lyeth East from thence towards England, 25 leagues in the like altitude, which Bank is a sand and in most places twelve leagues broad, and in length North East and South West 100 leagues, on which Bank there is no less than 20 fadome of water at any place . . . ."
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> **Sir Richard Whitbourne (1579-1626)**

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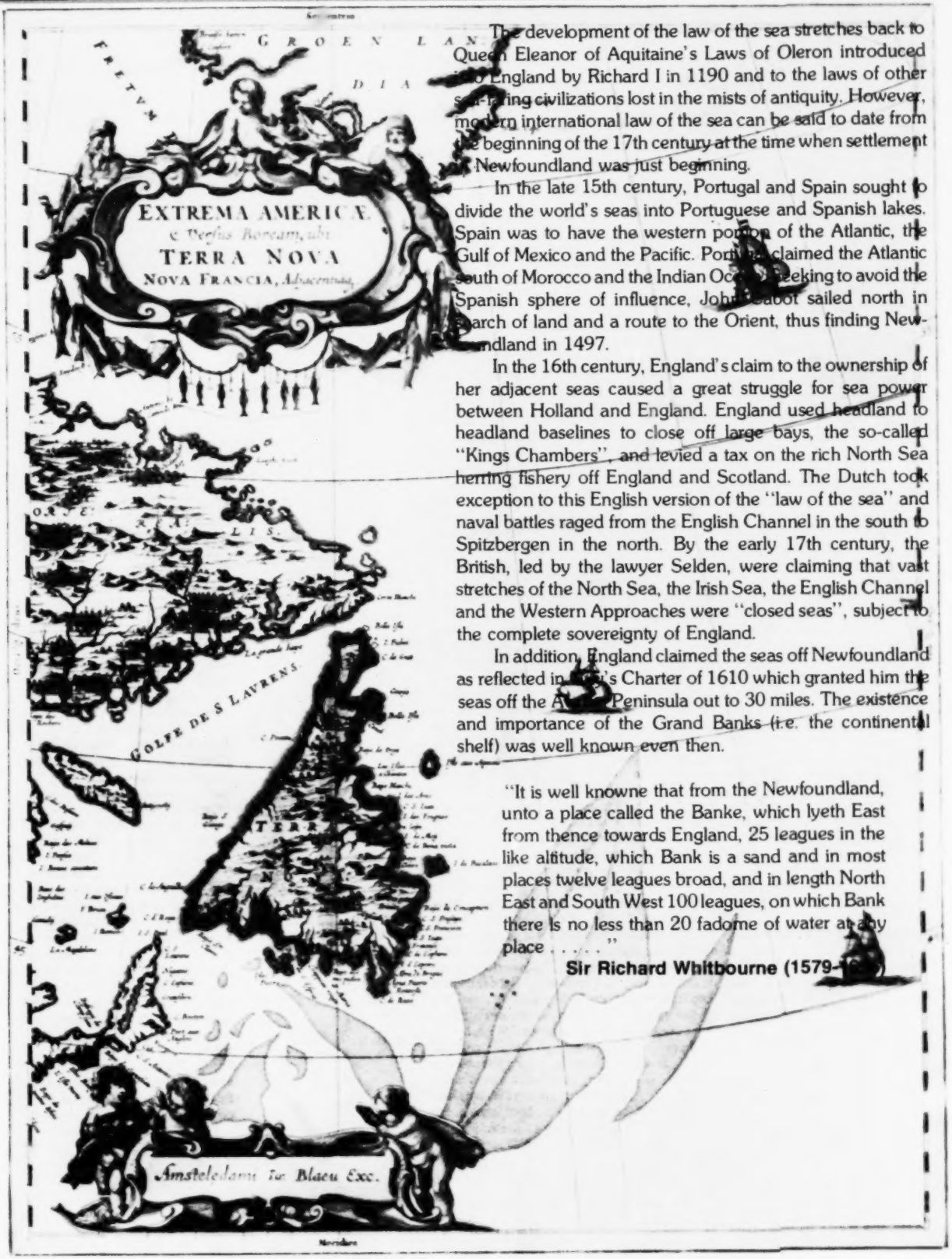

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> **Sir Richard Whitbourne (1579-[illegible])**

But, while England won the naval battles, it was the Dutch, led by the great lawyer, Grotius, who won the battle of words. Grotius formulated the theory that the seas were free to all by their nature and by natural law. Thus, outside a three mile limit, fishing and shipping could only be regulated by a vessel's home state. Needless to say, this new Dutch theory coincided with their fishing interests off England and their desire for free trade to the Portuguese East Indies. Slowly England and indeed the whole world came to accept this version of the Law of the Sea — the "Freedom of the Seas" was born.

However, England continued to claim the minerals of the bed of the sea. The outer limit of this claim was for practical reasons never defined. For instance, throughout the 19th century, grants were made under the Crown Lands Acts to the subsea minerals underlying the three-mile territorial sea and beyond, some out to ten miles. Indeed, numerous submarine coal and tin mines came into production. In the **Cornwall Submarine Mines Case** of 1857, the right of the Crown of England to minerals "under the open sea" adjacent to the coasts of England was upheld by the distinguished arbitrator, Sir John Patteson.

1583-1645 THE FATHER OF INTERNATIONAL LAW

Remnants of England's old claim to "sovereignty of the seas" remained until early in the 19th century, when a young United States of America forced an official recognition of the three-mile limit in the Treaty of Washington of 1818. In that Treaty, England admitted that the United States had the right to fish on the Grand Banks of Newfoundland and that England's control extended only to fisheries within three miles of the coast and bays of Newfoundland. Having defeated Napoleon and become truly "Mistress of the Seas", it was now to England's advantage to promote a narrow territorial sea.

Nevertheless, England and the other nations of the world did not at first bother to develop a rule of international law for subsea minerals. Before the 20th century, such minerals could only be won by digging a mine from land. Each coastal state could forbid anyone from tunnelling out from its shores, so there was no need for an international law to protect one country's minerals outside the three-mile limit from being taken by another country. We shall see that when the technology was developed to extract such minerals via the surface of the sea in the 1930's and 1940's, international law moved to protect the coastal state's rights.

THE FRENCH SHORE PROBLEM: Newfoundland Gains Her Own Offshore Rights

The exact nature of a coastal state's rights in its three-mile territorial sea was, however, clouded by navigation and fisheries problems. By the 1850's, England was fighting an increasingly bitter battle with a number of her colonies over the rights of foreign fishermen in the Empire's territorial seas. Newfoundland sought to exclude French fishermen from her territorial waters and was considered particularly embarrassing to the maintenance of good relations with France. Indeed, protection of our fishery resources, especially on the French Shore, provided fuel for those Newfoundlanders fighting for Responsible Government — a goal attained in 1855. The French Shore which even in 1904 stretched from Cape Ray up the entire west coast around to Cape John was a crucial issue to our forefathers.

The Royal Gazette.

TUESDAY, APRIL 14, 1857.

THE FISHERY CONVENTION ABROGATED!

A *Gazette Extraordinary* was issued this morning, containing the subjoined highly important and gratifying official matter.

GOVERNMENT NOTICE.

—o—

Published by Authority.

HIS EXCELLENCY THE GOVERNOR has much pleasure in directing the publication, for the information of the Inhabitants of the Colony, of the following Despatches which he received by the Mail which arrived last evening.

By Command,

ELLIOT SALTER,
Private Secretary.

Government House,
14th April, 1857.

(Copy.)
No. 10.

DOWNING STREET,
26th March, 1857.

SIR,

I have to acknowledge your Despatches of the numbers and dates specified in the margin.

No. 8, 7th Feb., '57.
11, 3rd March.
12, 4th March.
13, 5th March.

When Her Majesty's Government entered into the Convention with that of France, which has formed the occasion of that correspondence, they did so in the hope of bringing to a satisfactory arrangement the many complicated and difficult questions which have arisen between the two Countries on the subject of the Newfoundland Fisheries. But they did so with the full intention of adhering to two principles, which have guided them and will continue to guide them, namely, that the rights at present enjoyed by the community of Newfoundland are not to be ceded or exchanged without their assent, and that the Constitutional mode of submitting measures for that assent is by laying them before the Colonial Legislature. For this reason they pursued the same form of proceeding which had been before pursued in the case of the Reciprocity Convention with the United States, and which was in that case adopted and acted upon by the Newfoundland Legislature. It was in perfect uniformity with the same precedent, that it appeared necessary in the present instance to add a condition respecting Parliamentary Enactment, in order that, if necessary, any existing obstacles to the arrangement in the series of Imperial Statutes might be subsequently removed.

The proposals contained in the Convention having been now unequivocally refused by the Colony, they will of course fall to the ground; and you are authorized to give such assurance as you may think proper that the consent of the community of Newfoundland is regarded by Her Majesty's Government as the essential preliminary to any modification of their territorial or maritime rights.

I have &c.,

(Signed) H. LABOUCHERE.

GOVERNOR DARLING,
&c., &c., &c.

In 1857, England had enraged Newfoundlanders by signing a treaty extending France's rights on the French Shore without consulting the Newfoundland Legislature. Judge Prowse, the famed Newfoundland historian, reported that there were meetings "as hot and fiery as the Tea riots of Boston". The Newfoundland Legislature sent an angry message to London protesting a giving away of "the basis of our commerce and our social and political existence."

In answer, the Secretary of State for the Colonies, Labouchere, conceded that the consent of the Newfoundland people would henceforth be considered essential before Newfoundland's "territorial or maritime rights" could be modified — there would be no more secret fisheries treaties. This great concession was to be invoked continuously in Newfoundland's battles with the French and later the Americans.

The French Shore question itself was settled in 1904 when France's rights on land were finally extinguished.

THE STRANGE CASE OF THE QUEEN AGAINST CAPTAIN KEYN

This then was the setting for the celebrated case of **R** v **Keyn** in 1876, Ottawa's key case in the 1967 **British Columbia Offshore Minerals Reference.** Keyn was captain of the German vessel "Franconia" which ran down the British vessel "Strathclyde" two and a half miles off Dover Beach, killing a number of people on the "Strathclyde". Keyn was charged with manslaughter. The Court split seven to six, the majority holding that English criminal law did not apply to foreigners in England's three-mile territorial sea for it felt that the right of one state's vessels to freely pass through another state's territorial sea was firmly entrenched in international law.

The 1876 case of **R** v **Keyn** was one of the most controversial cases in English law and has been criticized by the courts and learned writers alike and in fact was overruled by the English Parliament in the Territorial Waters Jurisdiction Act of 1878. It did not even deal with offshore minerals, but with a criminal charge of manslaughter. It perhaps seems strange that this case over 100 years ago, in a matter as remote as the skill of a German captain, would now play a key role in deciding Newfoundland's future. Yet the fact remains, that the remarks of certain of the majority judges which can be interpreted to mean that at Common Law the Crown's rights in general stopped at the low water mark, comprise the main prop of Ottawa's claim to our offshore minerals.

Whatever its application to British Columbia, the evolution of both the law of the sea and Newfoundland's constitutional status with the passage of time has made the case of **R** v **Keyn** irrelevant to the interpretation of our Terms of Union.

Even in the 19th century England, the effect of **R** v **Keyn** was confined to criminal law matters. People holding crown grants to subsea minerals had naturally been worried by this case. They had taken out crown grants, started submarine coal mines, dutifully paid their royalties and now their title to subsea minerals seemed in jeopardy. Not so, said the Law Officers of the Crown in 1878 replying to an official inquiry as to whether, in view of **R** v **Keyn**, new legislation should be passed. In their words:

> "We do not think any doubt really exists as to the Crown's Title to the bed of the Sea adjacent to the Sea Coasts of the Queen's Dominions and to the minerals therein."

Thus, **R** v **Keyn** was buried away, only to be resurrected by Ottawa in its present fight with the Provinces over offshore minerals.

THE COLLISION IN DOVER BAY: THE FRANCONIA BACKING FROM THE STRATHCLYDE.

THE BED OF THE TERRITORIAL SEA: Sir Robert Defends Our Claim

Newfoundland's rights to the seabed of the territorial sea were confirmed by the Supreme Court of Newfoundland in the 1877 case of **Direct U.S. Cable Co.** v **Anglo-American Telegraph Co.**, the so-called **"Conception Bay Case,"** which, unlike **R** v **Keyn**, dealt directly with the use of the seabed (i.e., for the purposes of laying a submarine telegraph cable). This position was repeated in the 1888 case of **Rhodes** v **Fairweather**, and in the 1889 case of **R** v **Delepine**.

Newfoundland's right to the bed of the territorial sea came up again in 1903. A company with a mine at York Harbour, Bay of Islands on the French Shore, applied for a Crown Grant extending below the low water mark on which to build a wharf. The French protested that this was beyond the power of the Government of Newfoundland because it affected their fishing rights. Not so, said Prime Minister Sir Robert Bond: Because our territorial waters out to three miles are part of the territory of Newfoundland, we can make grants therein as we please.

In 1903, Bond's Government also amended the Crown Lands Act to provide for mining grants "covered by the Sea or public tidal waters." Subsequently, many submarine mining grants were made in the territorial sea. Under the Atlantic Steam Service Act of 1907, the Newfoundland Legislature granted the promoter of a futuristic undersea railway tunnel, rights to the seabed under the Strait of Belle Isle, far outside the three-mile territorial sea. In 1910, the landmark North Atlantic Fisheries Arbitration with the United States to interpret the 1818 Treaty of Washington, confirmed that Newfoundland's three-mile territorial sea was to be measured from headland to headland baselines drawn across the mouths of our great bays.

Official documents on both sides of the Atlantic show that by the 1900's, the Governments of England and Newfoundland agreed that the lands and minerals underlying the three-mile territorial sea were controlled by the Legislature of Newfoundland. Seabed rights beyond three miles did not often specifically come up but where they did as in the 1907 Strait of Belle Isle railway tunnel project, Newfoundland, not England, was taken to control the Crown's immemorial rights to them.

SIR ROBERT BOND
PRIME MINISTER OF NEWFOUNDLAND 1900-1909.

NEWFOUNDLAND BECOMES AN INDEPENDENT DOMINION

The late 19th century saw a steady growth in the rights and privileges of self-governing colonies, changes which were to lead to Dominion status for both Canada and Newfoundland.

One of the mileposts on the road to Dominion status was the establishment of peace time "Dominion Navies" by Australia and Canada. In 1911, England appeared to be giving Canadian warships the right to patrol Newfoundland's territorial waters. Newfoundland countered that without her consent, Canada's navy could no more enter her territorial waters than that of any foreign power and England was forced to concede the point. Only three years later at the outbreak of World War I, that consent was to be freely given. Newfoundland and Canada established a "joint sea-going patrol" and Canada undertook to patrol Newfoundland's territorial sea west of the Burin Peninsula and in the Gulf of St. Lawrence.

Indeed, it was World War I which provided the climate for really radical change. England desperately needed the men and resources and thus the co-operation of the self-governing colonies. In 1917, England admitted the self-governing colonies, including Newfoundland, into the Imperial War Cabinet.

The self-governing colonies were not content just to help run the Empire's war effort and began to press for a decentralized Empire. In 1917, England agreed that the Dominions should be treated as "autonomous nations" in an Imperial Commonwealth. This concept of "Dominion status" was a radical departure, for it meant that England and the Dominions were to become separate and equal countries with the same King.

The Imperial Conference of 1926 formally agreed that the self-governing Dominions (i.e., Australia, Canada, Irish Free State, Newfoundland, New Zealand and the Union of South Africa) were ". . . . autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs . . . . "

In 1931, this agreement was enshrined in the Statute of Westminister and Newfoundland, to mark its change of status from a self-governing colony to a self-governing Dominion, changed the position "Colonial Secretary" to "Secretary of State" and created a "Department of External Affairs." From 1931 to 1934, the Prime Minister of Newfoundland also held the title of "Secretary of State for External Affairs."

THE TERRITORIAL SEA: The Influence of Aviation

Prior to World War I, some doubt may have lingered as to the nature of the rights a coastal state held under international law in its territorial sea because of the right of innocent passage for foreign flag ships. How could you have "sovereignty" over the territorial sea if you couldn't stop foreign flag vessels from passing through it?

However, the coming of air power during World War I changed all that. There was no way anyone wanted to give these new engines of sudden destruction "innocent" passage over their land territory or their three-mile territorial sea. Thus, the International Air Navigation Convention of 1919 gave coastal states absolute sovereignty in the air space over their territory, including a three-mile territorial sea. Pursuant to this treaty, Newfoundland, by now an independent, self-governing Dominion, passed the Air Navigation Act of 1929, asserting sovereignty above her territorial sea.

As the center of pioneering Trans-Atlantic aviation in the 1920's and 1930's, Newfoundland was very active in controlling overflights of her territory. A striking example of the exercise of this right took place in 1933 when Admiral Balboa landed his fleet of 24 Savoia-Marchetti Italian seaplanes in Newfoundland's territorial waters at Shoal Harbour, Trinity Bay enroute to the World's Fair to Chicago. In contrast to the normal right of foreign ships to call for fuel and provisions at any port along its voyage, Balboa had to obtain special permission to land in or overfly our territory from the Government of Newfoundland. Moreover, the Italians bypassed London and dealt directly with Newfoundland's Secretary of State, indicating the change which had taken place in our status on the international level.

The three-mile territorial sea was now fully part of a state's territory for aviation purposes and it was to be a small step to agreement that it was part of a state's territory for all purposes.

In 1923, an Imperial Conference of all the self-governing Dominions and England established an Empire policy on the territorial sea, calling for full sovereignty in a three-mile territorial sea. At an historic 1930 League of Nations Conference, Britain, the Dominions and nearly all other countries took the position that a coastal state had sovereign rights to the minerals of the seabed and subsoil of their three-mile territorial seas. The English common law claim to absolute control of the mineral resources of the bed of the adjacent sea was now re-confirmed by international law out to 3 miles.

The status of minerals beyond 3 miles was left undiscussed in 1930. Technology had not yet given rise to the potential for conflict between states over subsea minerals. The coastal state had control of the onshore pithead and that seemed enough.

ADMIRAL BALBOA, HIS PLANE & PERMISSION TO LAND.

RUM RUNNING: The Beginning of the End for "The Freedom of the Seas"

Meanwhile, the 19th century idea that a coastal state could not control the surface of the sea beyond three miles received a severe blow from laws resulting from the United States' prohibition policy of the 1920's and 1930's. Rum runners in fast motor boats rendezvoused with Newfoundland and Canadian schooners lying off the coast of the U.S.A., and sped through the narrow three-mile limit to land their illegal liquid cargoes. The U.S.A countered by claiming the right to stop, search and seize all ships, regardless of flag, if engaged in smuggling within 12 miles of the coast of the United States. In the 1920's and 1930's, the U.S.A. regularly seized Canadian and Newfoundland schooners in their twelve-mile "hovering zone". The sinking of the schooner "I'm Alone" in 1929 was one such seizure.

Britain feared that these "hovering zones" were just the first hole in the dike. Soon, she thought, there would be other restrictions on the Royal Navy's freedom of movement and so fought unsuccessfully to keep a pure "Freedom of the Seas" concept beyond three miles. This pre-occupation with the "Freedom of the Seas" was to have some strange consequences. For instance, in 1929, an unsuccessful start was made on the construction of a Channel Tunnel, or Chunnel as it is called, from France to England. The question was asked, who owns the bed of the English Channel beyond three miles through which the tunnel would pass?

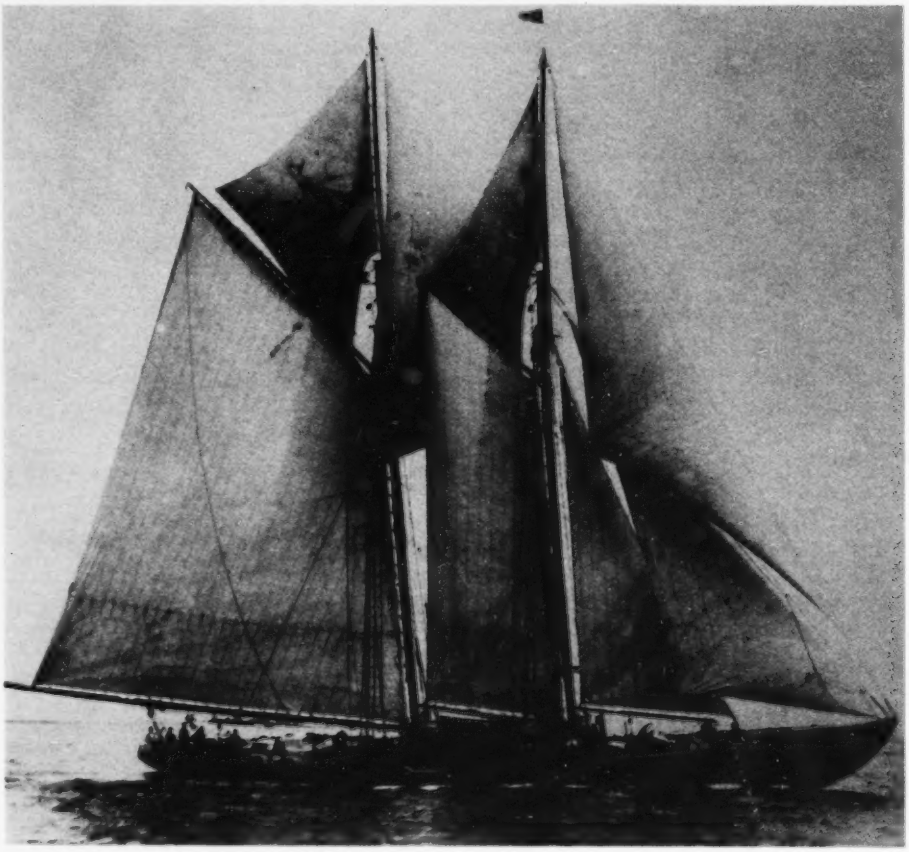
Some thought that the Crown's age-old rights to the seabed beyond three miles and half way to France went against a pure "Freedom of the Seas" concept; to be consistent, the seabed beyond three miles should be considered a legal "no-man's land", which belonged to no one. When England's own submarine mines were pointed out, supporters of this new theory said, the first country to "occupy" a particular area of the seabed owns it, so no problem.

However, the British Navy itself saw a big problem with this theory and asked: How will we be able to stop Germany from occupying the seabed and setting up military installations three and a half miles off the coast of England? Floating mines moored to the seabed and the new scourge of the sea, the submarine, seemed particularly troublesome.

Faced with such practical problems, the "no-man's land" concept was not acceptable. But there was a new reason why a more workable idea had to be found and fast; oil drilling technology was on the move. The capability of building platforms beyond the three-mile limit and working oil deposits from the surface of the sea did not seem far away, at least for calm, shallow water. Indeed, it was as early as 1938 that the Creole offshore oil field was discovered 1½ miles from shore and 1947 saw the discovery of the Ship Shoal oil field, 12 miles from shore and the first out of sight of land, both in the Gulf of Mexico.

The nations of the world obviously had to develop a new law in response to these developments. Otherwise one state might begin raiding another state's continental shelf. Control of onshore pitheads was no longer enough. Back in 1934, the United Kingdom (for Trinidad) and Venezuela had set the trend in their negotiations over the oil and gas resources of the Gulf of Paria between Trinidad and Venezuela. The UK and Venezuela assumed that this was a matter only for the two neighbouring coastal states. By 1942 they had signed a treaty dividing up between themselves the oil and gas resources of an area far beyond the three-mile limit of either country. No one protested.

TYPICAL NEWFOUNDLAND RUM RUNNER OF THE 20's & 30's.



However, if the Law of the Sea was advancing in the early 30's, the constitutional evolution of Newfoundland, having reached the zenith of Dominion status, began to falter. What effect did the Commission of Government era have on our offshore mineral rights?

Ottawa will no doubt argue that we gave up all our rights as a Dominion in 1934 and became a colony of the lowest order, even to the point of losing to Britain all the subsea mineral rights we may have held, even in the three-mile territorial sea. In addition, Ottawa will say that any rights created by international law with respect to our continental shelf between 1934 and 1949 belonged not to Newfoundland but to Britain and that all our pre-Confederation subsea mineral rights were transferred directly from Britain to Ottawa in 1949.

These arguments distort the basic equitable principles determining the rights of even colonial peoples within the British Empire. They also forget that by a fundamental rule of international law, a state or a self-governing Dominion always retains its basic sovereignty unless it plainly and clearly gives it up; for instance, by being conquered in war. A country may allow another to come in and run its foreign affairs, provide for its defence, yes, even run its Post Office, but unless it expressly gives up its basic sovereignty and rights it retains them.

The temporary suspension of Dominion status in 1934 until our economic condition improved, did not in any sense represent the giving up of Newfoundland's basic sovereignty or rights.

Moreover, Canada constantly treated Newfoundland as an independent, sovereign state during the Commission of Government period, for instance, by entering into numerous treaties directly with Newfoundland and by maintaining a High Commissioner (or Ambassador) to Newfoundland. The official Canadian position was set out in Ottawa's instructions to its second High Commissioner to Newfoundland in 1944:

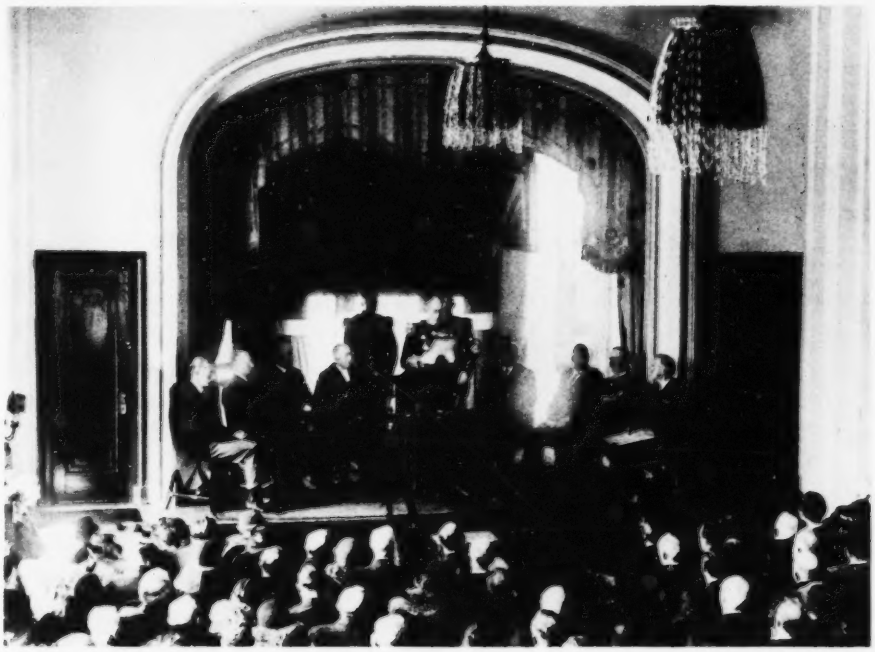
> "While Newfoundland has relinquished for the time being its right to self-government, it has been and is being treated as an autonomous country in all formal relationships by the Canadian Government."

Recognition of Newfoundland's continued separate legal existence as a state was repeated on an international level on February 8, 1949 when Dr. Raymond Gushue and Dr. Wilfred Templeman signed the ICNAF Convention for Newfoundland as representatives of a separate independent state.

Any continental shelf rights created or confirmed by international law in the period 1934-1949 would surely have belonged to Newfoundland by virtue of its residual sovereignty.

Moreover, any doubt as to our status during Commission of Government was eliminated by Term 7 of the Terms of Union which our negotiators in 1948 wisely inserted to say that Newfoundland's Dominion status and rights, suspended by Commission of Government, came back in full force for an instant prior to Union. Thus, Newfoundland entered Confederation, not as a colony, but as, and with all the rights of, a fully-fledged, self-governing Dominion; that is to say, a sovereign state.

What undersea mineral rights did a sovereign state have in 1949? We know all states owned the minerals under their three-mile territorial sea; what of the continental shelf beyond?



SWEARING IN OF 1ST. COMMISSION OF GOVERNMENT FEBRUARY 16, 1934.

U.S.A., CANADA AND NEWFOUNDLAND: Co-founders of the Continental Shelf Doctrine

Some writers have said that the "no-man's land" theory was the law on March 31, 1949 and that Newfoundland first had to claim her continental shelf rights in a Proclamation or by Legislation before she actually owned them — that is, we had to "occupy" our continental shelf on paper. But in 1943, the opposite school of thought received a big boost when the U.S.A., Canada and Newfoundland began talks on the management of the fishery and mineral resources of their respective continental shelves. Official State Department files in Washington show that Newfoundland's delegates, especially Dr. Raymond Gushue, played a very key role in those talks.

On August 23, 1945, Newfoundland's official position was delivered in writing to the Canadian High Commissioner to Newfoundland in St. John's. It supported the United States position that a coastal state had the automatic and exclusive right to develop the mineral resources of its adjacent continental shelf. Canada did not object to Newfoundland's position. On September 28, 1945, the landmark Truman Proclamation was issued by President Harry S. Truman, declaring that the United States had the automatic and exclusive right to develop the mineral resources of its continental shelf and inviting its neighbours to claim likewise.

Documents released in January of this year show that by 1946 Britain herself was starting to abandon the "no-man's land" theory and to adopt the U.S.A. position of "automatic" continental shelf rights. When Flinn, Newfoundland's Commissioner for Natural Resources, asked in 1947 whether Newfoundland, or the United Kingdom on behalf of Newfoundland, should issue a Proclamation claiming the mineral resources of Newfoundland's continental shelf, he was told by London that no such action was required. Technically, this was correct; the minerals of the continental shelf could be said to be automatically ours. However, it is ironic that a Proclamation putting the ownership of our continental shelf minerals beyond all question was not made at that time.

The United States continental shelf concept soon swept the seas. Mexico, Argentina, Costa Rica, Chile, Guatemala, Nicaragua, Peru, U.K. (Bahamas and Jamaica), and the Philippines had all claimed continental shelf rights by 1949. Canada did not protest any of these pre-1949 claims. Between 1949 and 1951, numerous other countries claimed the mineral resources of their continental shelves. In 1951, the International Law Commission, a branch of the United Nations, stated that a coastal state was automatically entitled to the minerals of its continental shelf. This report formed the basis of the 1958 United Nations Treaty on the Continental Shelf, which to this day, remains the most important statement of the law of continental shelf minerals.

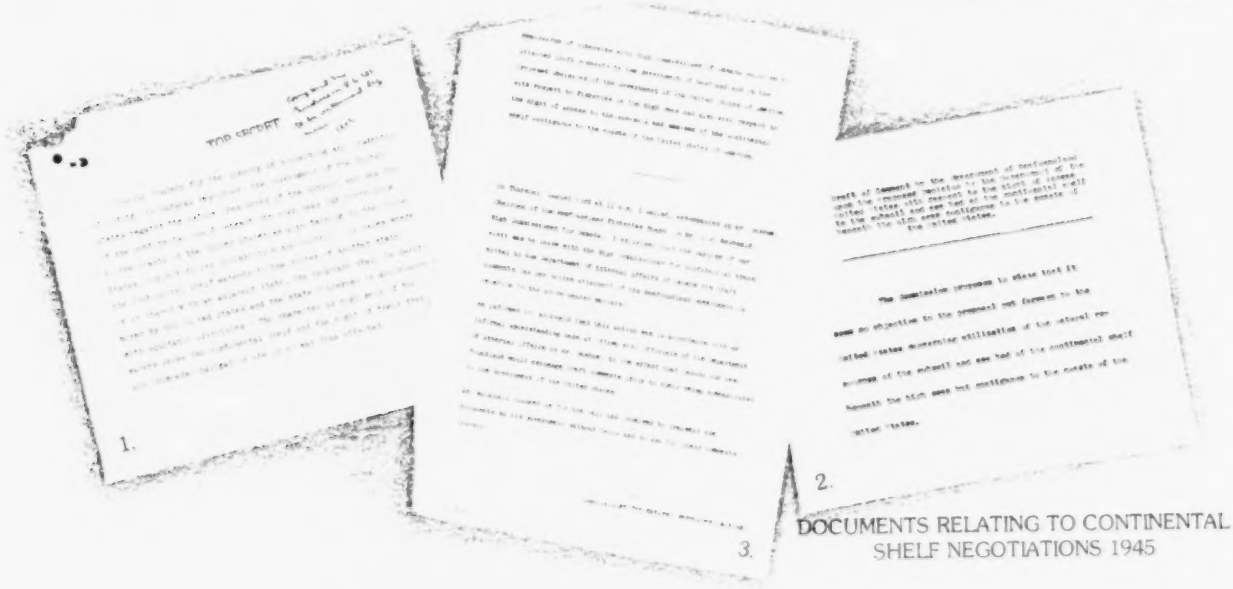
In 1969, the International Court of Justice, another branch of the United Nations, in the **North Sea Continental Shelf Cases**, confirmed that a coastal state's continental shelf rights arise quite independently of and predate the 1958 UN Treaty. Moreover, those rights, the court said, are inherent rights and need not be claimed in any sort of legislation or proclamation; they exist anyway.

By our critical date, March 31, 1949, the USA's automatic rights theory, as later confirmed by the International Law Commission and the International Court of Justice, had been used extensively without protest. Since its first unveiling in 1945, it had never been seriously challenged.

Ottawa will have to prove that the concept became good law not before 1949 but sometime between 1949 and 1958. It is true that as late as 1951, certain academics did cling to the "no-man's land" theory and one private arbitral award stressed the "holes" and "gaps" in the continental shelf doctrine but they were like King Canute trying to stop the waves.

That then, was the situation with respect to Continental Shelf minerals in 1949 insofar as we now know it.

There are, it is expected, still critical documents in Ottawa to which our researchers have not yet had access because of the "30 years rule" of secrecy. Access to these documents is very important and is now being negotiated.



DOCUMENTS RELATING TO CONTINENTAL SHELF NEGOTIATIONS 1945

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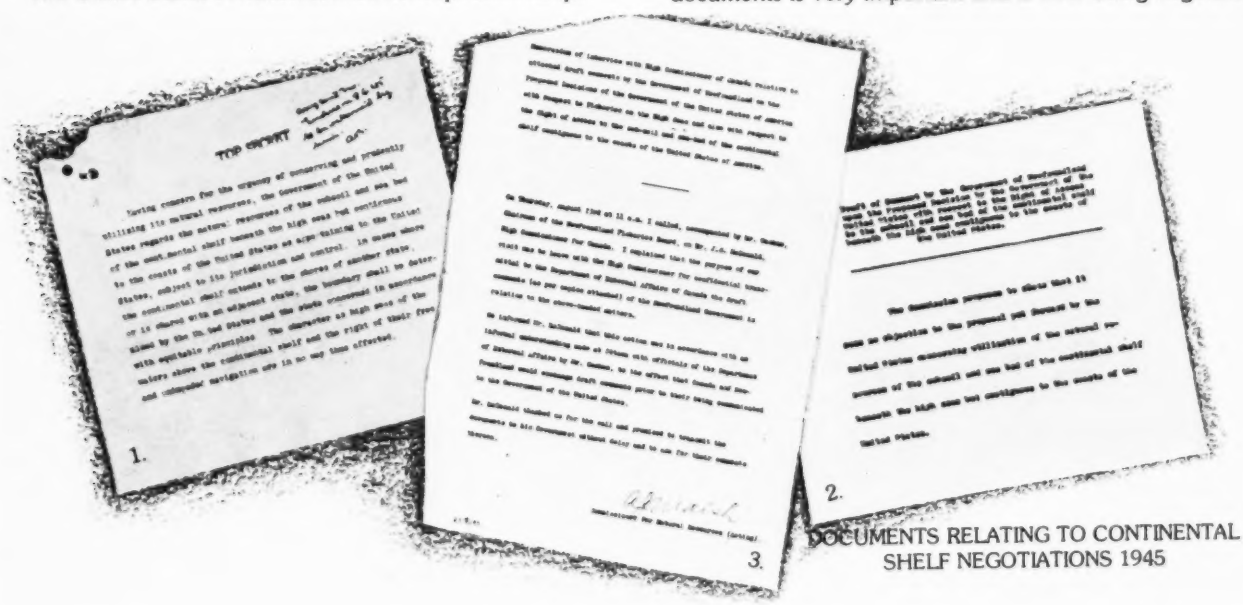
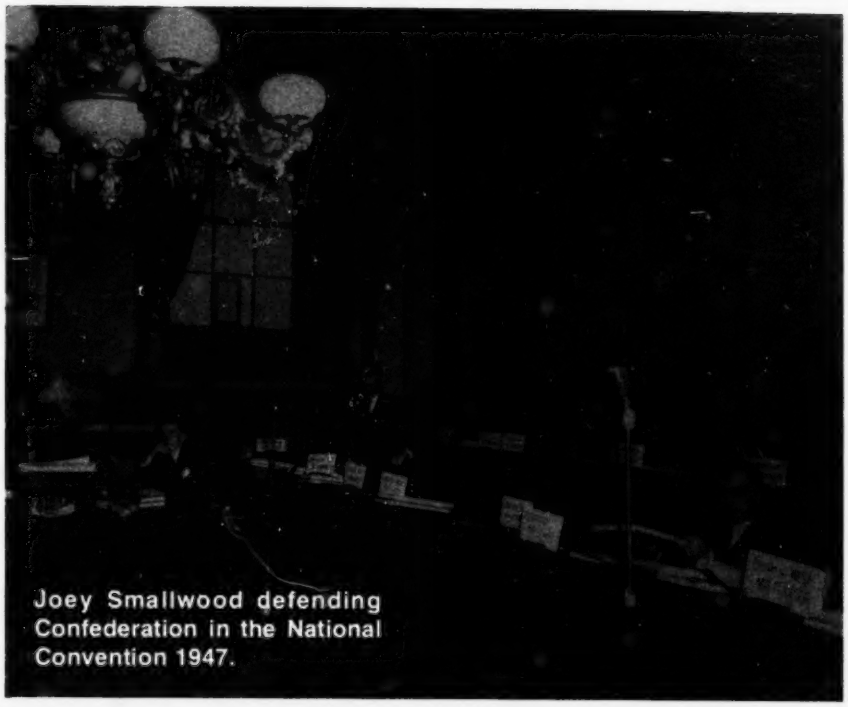


DOCUMENTS RELATING TO CONTINENTAL SHELF NEGOTIATIONS 1945

THE TERMS OF UNION: OUR RIGHTS PRESERVED

Back in the early 40's, of course, Newfoundlanders, encouraged by wartime prosperity, had turned their minds to the restoration of their full Dominion rights which had been suspended by Commission of Government. The National Convention of 1947, called to discuss whether the Newfoundland people wanted an end to Commission of Government, saw a new and radically different idea — Confederation with Canada — begin to gather support under the leadership of J. R. Smallwood. Responsible Government (or Dominion Status) won the first referendum, but without a clear majority. Commission of Government was dropped from the ballot and Confederation won a narrow majority in the second referendum. The Terms of Union between Newfoundland and Canada came into effect on April 1, 1949.



Joey Smallwood defending Confederation in the National Convention 1947.

Term 37 says that all lands, mines, minerals and royalties "belonging to" Newfoundland before Union, shall belong to the Province of Newfoundland after Union.

The Terms of Union were negotiated by the representatives of two equal sovereign states. The care with which Term 7 was inserted to guarantee that we entered Confederation as a full-fledged sovereign Dominion indicates the forethought which went into the Terms of Union.

Documents relating to the negotiation of the Terms of Union show that our negotiators were very concerned over Ottawa's encroachment on our ownership and control over our natural resources. Moreover, Ottawa's written assurances that we would retain full control over all our mineral and other resources, contain no hint that what Ottawa meant was not "minerals, period" but "minerals on land".

Indeed, how can we possibly assume that our negotiators, representing a country whose mining industry was largely based on Bell Island's submarine iron mines, stretching several miles out under the sea, agreed to give up our undersea mineral potential?

OUR QUEST FOR JUSTICE

The Supreme Court of Canada will be faced with the task of deciding whether the minerals of the continental margin adjacent to Newfoundland and Labrador, in the words of Term 37, "belonged" to Newfoundland on March 31, 1949.

The massive amount of evidence upon which the above historical and legal outline is based, provides a strong case for saying that, purely as a matter of law, these resources did belong to Newfoundland prior to 1949, even if we had not expressly claimed them. Under international law, such a claim was not needed; continental shelf rights automatically belong to the coastal state.

But apart from this strict legal interpretation, what is the fair and equitable interpretation of the words "belonging to Newfoundland?"

During the continental shelf negotiations between the USA, Newfoundland and Canada from 1943 to 1945, Canada did not protest the automatic continental shelf rights theory. In light of Newfoundland's written position supporting that theory, should Ottawa now be able to rest on its silence and say that continental shelf rights were not automatic and because Newfoundland did not issue a proclamation claiming them, such rights are to be excluded from the meaning of Term 37? Surely, if that was Canada's position, it was Canada's duty to point that out during the 1948 negotiations on Term 37.

Finally, there is an even more basic question here. Even if one forgets the great weight of evidence in our favour and assumes that our continental shelf was a "no-man's land" in 1949, it certainly is not now. As a matter of international law, it has firmly belonged to Canada at least since "before" the U.N. Continental Shelf Treaty of 1958. The crucial question in that case becomes: Which government within Canada, the Federal Government or the Government of Newfoundland and Labrador, should be given control over this resource in view of our present constitution?

Surely that question must be answered in light of this resource's importance to, and possible impact on, this Province. The answer must also reflect the way in which we wish Canada to evolve: Should power become more centralized in Ottawa or should we strengthen our Provinces?

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CONCLUSION

We have begun a new phase in the fight to gain recognition of our right to control the development of our offshore oil and gas resources and to turn them to our lasting benefit. The outcome of that fight will hold the key to our future. It will determine whether we will remain dependents of Ottawa or whether we will be able to create a viable economic and social context for our people's development.

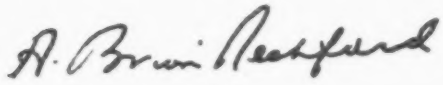
Moreover, even if the Supreme Court of Canada rejects our legal case, we must not give up. We must make it plain to Ottawa that we will not meekly accept the negative impacts and lost opportunities of federally-controlled offshore oil and gas developments.

Ottawa must be made to recognize the legitimate interests of the people of this Province.

If, as we fully expect, the Province is successful in the Supreme Court of Canada, this Government will implement an offshore management scheme that maximizes the benefits to the people of the Province but which at the same time recognizes the legitimate interests of our fellow Canadians and permits the oil companies to make a sufficiently attractive rate of return on their investment.

Newfoundland joined Confederation with the determination to pay its own way and to make a worthwhile contribution.

Let us all work together to ensure we get that chance.



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